

No. 11159

United States
Circuit Court of Appeals
For the Ninth Circuit.

A. M. STANDISH,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent,
and

BEATRICE M. STANDISH,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of the Record

Upon Petitions to Review Decisions of the Tax Court
of the United States

FILED

NOV 30 1945

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PAUL P. O'BRIEN,
CLERK

No. 11159

United States
Circuit Court of Appeals
For the Ninth Circuit.

A. M. STANDISH,

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vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent,

and

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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—direct78, 85

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APPEARANCES

For Taxpayer:

R. CLARENCE OGDEN, ESQ.,

LOUIS JANIN, ESQ.,

For Comm'r:

T. M. MATHER, ESQ.,

R. C. WHITLEY, ESQ.,

Docket No. 3949

A. M. STANDISH,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1944

Feb. 2—Petition received and filed. Taxpayer notified. Fee paid.

“ 4—Copy of petition served on General Counsel.

“ 26—Answer filed by General Counsel.

“ 26—Request for hearing in San Francisco filed by General Counsel.

Mar. 6—Notice issued placing proceeding on San Francisco, Calif. calendar. Service of answer and request made.

Aug. 10—Hearing set Sept. 18, 1944 at San Francisco, Calif.

Sep. 19—Hearing had before Judge Van Fossan on the merits. Submitted. Ordered consolidated with Docket 3950. Briefs due 10/19/44. No replies.

Oct. 14—Transcript of hearing of 9/19/44 filed.

1944

Oct. 19—Brief filed by taxpayer. 10/31/44 copy served.

“ 25—Motion for leave to file the attached brief, brief lodged, filed by General Counsel. 10/25/44 granted and served 10/31/44.

1945

Mar. 19—Findings of fact and opinion rendered, Van Fossan J. Decision will be entered under Rule 50. 3/20/45 copy served.

Apr. 17—Computation of deficiency filed by General Counsel.

“ 19—Hearing set 6/6/45 on settlement.

May 1—Hearing changed to 6/20/45 on settlement.

Jun. 20—Hearing had before Judge Van Fossan on settlement. Respondent's computation filed.

“ 20—Decision entered, Van Fossan J. Div. 9.

Sep. 17—Petition for review by U. S. Circuit Court of Appeals, Ninth Circuit, with assignments of error filed by taxpayer.

“ 17—Affidavit of service by mail of petition for review filed.

“ 26—Certified copy of an order from 9th Circuit consolidating proceedings for purpose of single record filed.

“ 27—Statement of points filed by taxpayer with affidavit of service by mail attached.

“ 27—Designation of contents of record on appeal filed by taxpayer with affidavit of service by mail attached. [1*]

APPEARANCES

For Taxpayer:

R. CLARENCE OGDEN, ESQ.,

LOUIS JANIN, ESQ.,

For Comm'r:

T. M. MATHER, ESQ.,

R. C. WHITLEY, ESQ.,

Docket No. 3950

BEATRICE M. STANDISH,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1944

Feb. 2—Petition received and filed. Taxpayer notified. Fee paid.

“ 4—Copy of petition served on General Counsel.

“ 26—Answer filed by General Counsel.

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“ 20—Decision entered, Van Fossan J. Div. 9.

Sep. 17—Petition for review by U. S. Circuit Court of Appeals, Ninth Circuit, with assignments of error filed by taxpayer.

“ 17—Affidavit of service by mail of petition for review filed.

1945

Sept. 26—Certified copy of order from 9th Circuit consolidating proceedings for purpose of single record filed.

“ 27—Statement of points filed by taxpayer with affidavit of service by mail attached.

“ 27—Designation of contents of record on appeal filed by taxpayer with affidavit of service by mail attached. [2]

The Tax Court of the United States

Docket No. 3949

A. M. STANDISH,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above-named petitioner hereby petitions for redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau symbols IRA:90-D WHL) dated November 8, 1943, and as a basis of his proceedings alleges as follows:

1. The petitioner is an individual with his residence at Milpitas, California. The return for the period herein involved was filed with the Collector for the First District of California.

2. The notice of deficiency, (copy of which is attached hereto and marked Exhibit "A") was mailed to petitioner on November 8, 1943.

3. The taxes and penalties in controversy are income taxes and five (5) per cent penalties thereon in the following amounts: [3]

| Year | Deficiency | 5% Penalty |
|-------------|------------|------------|
| 1940 | \$ 135.05 | \$ 6.80 |
| 1941 | 2,055.37 | 102.77 |
| | <hr/> | <hr/> |
| Total | \$2,191.42 | \$109.57 |

4. The determination of deficiencies set forth in said notice is based upon the following errors, all of which relate to the increase in distributable income of the partnership of A. M. Standish and Beatrice M. Standish for the years in question:

A. For the year 1940 the Commissioner erred in determining that said partnership was entitled to "proceeds in liquidation" of \$1,975.31 or in any amount in excess of \$760.00 as a return on a loan made to Yorkville Lumber Company on June 22, 1943 in the amount of \$5,000.00.

B. For the years 1940 and 1941 the Commissioner erred in determining that a penalty should be imposed upon your petitioner by reason of negligence or intentional disregard of rules and regulations, or otherwise. No part of the deficiency being due by reason of such errors, but only by reason of deductions disallowed.

C. For the year 1941 the Commissioner erred

in increasing petitioner's income by \$5,256.46 by disallowing the loss of \$10,512.92 claimed as a deduction on the partnership return of petitioner and his wife, Beatrice M. Standish, with respect to the loss of certain timber properties in the State of Oregon [4] from abandonment and nonpayment of taxes, and particularly erred in determining that "any loss sustained is deductible by the estate of Miles Standish, deceased, or the trust created by him, either prior to death or in his will". The last mentioned determination by the Commissioner is erroneous because the "trust" to which this property was "conveyed" was completely void, and because no probate proceedings having ever been commenced in the State of Oregon, the timber property located in that state, and the title thereto, passed to, and was vested in, A. M. Standish immediately upon the death of Miles Standish, and the loss sustained (now believed to be \$7,471.80, rather than \$10,512.92 claimed on the return) was sustained by the partnership as the successor in interest to said timber properties of the said Allan M. Standish, rather than by any estate or trust of, or created by Miles Standish.

5. The facts upon which petitioner relies in support of his proceedings are as follows:

(a) In 1934 the partnership of Allan M. Standish and Beatrice M. Standish (petitioner and his wife) made a loan of \$5,000.00 to the Yorkville Lumber Company. Security was later obtained for this loan, together with other loans. In March of

1940 said security was sold and the partnership advised that its share of the proceeds of \$1,975.31 would be \$760.00. Respondent has applied all of the proceeds of sale, rather than the partnership's share thereof, as an offset to the debt. [5]

(b) Petitioner is informed and believes and therefore alleges the fact to be that no part of the deficiency for either 1940 or 1941 is due to errors of bookkeeping or negligence but that said deficiencies result entirely from deductions disallowed, principally to the partnership of Allan M. & Beatrice Standish, and to increase the income of said partnership.

(c) Miles Standish died a resident of California on June 22, 1932, and at the time of his death was the owner in fee simple of an undivided one-half interest in certain real property located in Coos and Douglas Counties in the State of Oregon. As a consequence of such death said property vested in Allan M. Standish, the son of decedent, and he came into possession of the same on June 22, 1932, holding one-half of said interest for his own benefit and one-quarter thereof for each of the two minor children of himself and wife. At such time the property had a value of \$19,942.25 for the one-half interest owned by Miles Standish as finally determined by the Commissioner in Estate Tax Proceedings on his estate.

(d) Thereafter Allan M. Standish by written agreement with Beatrice M. Standish, transferred his one-fourth interest in said lands to the part-

nership of Allan M. & Beatrice M. Standish and said partners became the owners of, and entered into possession of, the said one-fourth interest in said lands. Thereafter the taxing authorities of said counties imposed such exorbitant taxes on said lands, a lien thereon, that payment thereof did not appear to be [6] justified and in 1941 petitioner and said Beatrice M. Standish abandoned said lands, permitting them to be finally sold in said year for such taxes. The loss sustained on said one-quarter interest was reduced by prior sales of portions of said lands, interests therein, or timber thereon, to \$7,471.80, as petitioner is informed and believes.

(c) Petitioner is informed and believes and therefore alleges that said loss is deductible, one-half on the return of himself for 1941, and one-half on the return of said Beatrice M. Standish for said year, and that the said loss is not that of any estate or trust.

Wherefore, petitioner prays the Court to hear the proceeding, to redetermine the deficiencies in accordance with this petition, and to grant such other and further relief as may be just, meet and proper in the premises.

R. CLARENCE OGDEN

LOUIS JANIN

Counsel for Petitioner [7]

AFFIDAVIT OF VERIFICATION

State of California,

City and County of San Francisco—ss.

Allan M. Standish, being first duly sworn, deposes and says:

That he is the petitioner named in and who makes the foregoing petition; that he has read the same and knows the facts stated therein to be true of his own knowledge, except as to those matters therein stated upon information and belief, and as to those matters that he believes it to be true.

ALLAN M. STANDISH

Subscribed and sworn to before me this 31st day of January, 1944.

[Seal]

LULU P. LOVELAND

Notary Public in and for the City and County of San Francisco, State of California. [8]

Treasury Department

Internal Revenue Service

San Francisco, Calif.

74 New Montgomery Street

Nov. 8, 1943

Office of Internal Revenue

Agent in Charge

San Francisco Division

IRA :90-D WHL

Mr. A. M. Standish,

Milpitas, California

Sir:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1940 and December 31, 1941 discloses

a deficiency of \$2,191.42 and penalties of \$109.57 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiencies and penalties mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the Tax Court of the United States for a redetermination of the deficiency and penalties.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Seventh Floor, 74 New Montgomery Street, San Francisco 5, California, for the attention of Conference Section. The signing and filing of this form will expedite the closing of your returns by permitting an early assessment of the deficiency and penalties, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

ROBERT E. HANNEGAN,
Commissioner

By F. M. HARLESS

Internal Revenue Agent in
Charge.

Enclosures:

Statement

Form of waiver [9]

STATEMENT

San Francisco

IRA :90-D

WHL

Mr. A. M. Standish,
Milpitas, California

Tax Liability for the Taxable Years Ended December 31, 1940 and December 31, 1941

| Year | Income Tax Liability | Assessed | Deficiency | 5% Penalty |
|--------|-------------------------|-------------------|-------------------|-----------------|
| 1940 | \$ 298.85 | \$ 162.80 | \$ 136.05 | \$ 6.80 |
| 1941 | 3,035.27 | 979.90 | 2,055.37 | 102.77 |
| Totals | <u>\$3,334.12</u> | <u>\$1,142.70</u> | <u>\$2,191.42</u> | <u>\$109.57</u> |

In making this determination of your income tax liability, careful consideration has been given to your protest filed July 15, 1943 and to the statements made at the conference held on August 2, 1943.

There is added 5 per cent of the total amount of the deficiency under the provisions of section 293 (a) of the Internal Revenue Code, due to negligence or intentional disregard to rules and regulations.

Adjustments to Net Income

Year: 1940

| | | |
|--|------------|--------------------------|
| Net income as disclosed by return..... | | \$4,455.64 |
| Unallowable deductions and additional income: | | |
| (a) Partnership income..... | \$1,429.31 | |
| (b) Rental income | 116.66 | \$1,545.97 |
| Net income adjusted | | <u><u>\$6,001.61</u></u> |

Explanation of Adjustments

(a) Your distributive share of the net income of the partnership of A. M. and B. M. Standish is increased by \$1,429.31 due to the following adjustment of partnership income: [10]

| | |
|---|--------------------------|
| Net income per form 1065 filed by the partnership | \$6,346.52 |
| Increase: | |
| 1. Loss from partnership of Standish and Hickey disallowed..\$ 668.31 | |
| 2. Fiduciary loss disallowed..... 200.00 | |
| 3. Bad debt disallowed..... 1,215.31 | |
| 4. Damage to orchard disallowed..... 935.00 | 3,018.62 |
| Total | <u>\$9,365.14</u> |
| Decrease: | |
| 5. Depreciation allowed..... | 160.00 |
| Partnership net income as adjusted..... | <u>\$9,205.14</u> |
| Your 50 per cent distributive share..... | \$4,602.57 |
| Amount reported on return..... | <u>3,173.26</u> |
| Increase in partnership income..... | <u><u>\$1,429.31</u></u> |

1. The loss of \$668.31 claimed as resulting from the operation of the partnership of Standish and Hickey is disallowed for the reason that the interest in the partnership is held by the Estate of Miles Standish, deceased.

2. The deduction of \$200.00 representing a loss sustained by the Estate of Miles Standish, deceased, is disallowed since such loss is not distributable.

3. Bad debt deduction claimed on a loan made

to Yorkville Lumber Company is reduced by \$1,215.31 as follows:

| | |
|------------------------------------|-------------------|
| Loan made June 22, 1934..... | \$5,000.00 |
| Proceeds in liquidation | 1,975.31 |
| | <hr/> |
| Bad debt worthless in 1940..... | \$3,024.69 |
| Amount claimed on the return | 4,240.00 |
| | <hr/> |
| Amount disallowed | <u>\$1,235.31</u> |

4. Deduction of \$935.00 for damage to orchard from blight is disallowed for lack of substantiation.

5. Additional depreciation of \$160.00 is allowed on buildings, which amount is computed as follows:

| | |
|--|-------------------|
| Basis for depreciation 1-1-1935..... | \$4,000.00 |
| Less: Depreciation allowed or allowable prior to 1-1-1940 | 960.00 |
| | <hr/> |
| Basis to be recovered 1-1-1940..... | <u>\$3,040.00</u> |
| Depreciation based on remaining life of 19 years | <u>\$ 160.00</u> |

(b) Income from residential property which was converted to rental purposes in 1940 is increased by \$116.66 due to the adjustment of depreciation shown below:

| | |
|--|--------------|
| Basis for depreciation of building..... | \$10,000.00 |
| | <hr/> |
| Depreciation at 5 per cent for 7 months..... | \$ 291.67 |
| Depreciation claimed | 350.00 |
| | <hr/> |
| Amount disallowed | <u>58.33</u> |

| | |
|--|-----------|
| Depreciation on furniture disallowed for lack of substantiation of basis..... | \$ 175.00 |
| Total disallowed | \$ 233.33 |
| Your one-half share | \$ 116.66 |

Computation of Tax

Year: 1940

| | |
|---|------------|
| Net income adjusted | \$6,001.61 |
| Less: Personal exemption | 455.64 |
| Balance (surtax net income)..... | \$5,545.97 |
| Less: Earned income credit (10 per cent of \$3,000).... | 300.00 |
| Net income subject to normal tax..... | \$5,245.97 |
| Normal tax at 4 per cent on \$5,245.97..... | \$ 209.84 |
| Surtax on \$5,545.97..... | 61.84 |
| Total | \$ 271.68 |
| Defense tax @ 10 per cent | 27.17 |
| Correct income tax liability..... | \$ 298.85 |
| Income tax assessed: | |
| Original, account No. 267922—First Calif. District | 162.80 |
| Deficiency of income tax..... | \$ 136.05 |
| 5% negligence penalty (5% of \$136.05)..... | \$ 6.80 |

Adjustments to Net Income

Year: 1941

| | |
|---|-------------|
| Net income as disclosed by return..... | \$ 7,665.26 |
| Unallowable deductions and additional income: | |
| (a) Partnership income | 7,043.49 |
| Net income adjusted | \$14,708.75 |

Explanation of Adjustments

(a) Your distributive share of the net income of the partnership of A. M. and B. M. Standish is increased by \$7,043.49 as shown below:

| | | |
|---|-----------|-------------|
| Net income per form 1065 filed by the partnership | | \$19,011.66 |
| Add: | | |
| 1. Increase in gross profit | | |
| from business | \$ 839.76 | |
| 2. Fiduciary loss | 484.95 | |
| 3. Fiduciary loss | 10,512.92 | |
| 4. Income from rents..... | 1,185.35 | |
| 5. Damage to orchard | 824.00 | |
| 6. Depreciation | 240.00 | \$14,086.98 |
| | | <hr/> |
| Partnership net income adjusted.. | | \$33,098.64 |
| | | <hr/> |
| Your 50 per cent distributive share | | \$16,549.32 |
| Amount reported on your return | | 9,505.83 |
| | | <hr/> |
| Increase in partnership income.... | | \$ 7,043.49 |
| | | <hr/> <hr/> |

1. Expenses deducted in computing the gross profit from business include an expenditure of \$839.76 for repairs to your residence. This amount is disallowed because it is a personal expense.

2. Deduction claimed for \$484.95 representing the net loss of the Estate of Miles Standish, Deceased, is disallowed because such losses are not distributable.

3. The loss of \$10,512.92 claimed as sustained by the Miles Standish Trust upon the loss of certain timber property because of failure to pay taxes owing to the State of Oregon is disallowed on the ground that any loss sustained is deductible by the

Estate of Miles Standish, Deceased, or trusts created by him, either prior to death or in his will.

4. Rental income is increased in the amount of \$1,185.35 received during the year 1941 but not reported in the partnership return.

5. Deduction of \$824.00 for damage to orchard from blight is disallowed for lack of substantiation.

6. Depreciation is reduced by \$240.00 based upon the following adjustment:

Depreciation on rental property:

| | |
|---|-------------|
| Per return | \$ 900.00 |
| As adjusted: | |
| Depreciation on \$10,000.00 at 5 per cent..... | 500.00 |
| | <hr/> |
| Disallowed | \$ 400.00 |
| Less: Additional depreciation allowed on buildings. (Depreciation on \$3,040.00 on basis of 19 year life)..... | 160.00 |
| | <hr/> |
| Net disallowance | \$ 240.00 |
| | <hr/> <hr/> |

Computation of Alternative Tax (Section 117 (c)—Internal Revenue Code)

Year: 1941

| | |
|---------------------------------------|-------------|
| Net income | \$14,708.75 |
| Plus: Net long-term capital loss..... | 1,749.28 |
| | <hr/> |
| Ordinary net income | \$16,458.03 |
| Less: Personal exemption | 750.00 |
| | <hr/> |
| Balance (surtax net income)..... | \$15,708.03 |
| Less: Earned income credit..... | 330.99 |
| | <hr/> |
| Net income subject to normal tax..... | \$15,377.04 |
| | <hr/> |

| | |
|---|-------------|
| Normal tax at 4 per cent on \$15,377.04..... | \$ 615.08 |
| Surtax on 15,708.03..... | 2,946.57 |
| Partial tax | \$ 3,561.65 |
| Minus: 30 per cent of net long-term loss..... | 524.78 |
| Alternative tax | \$ 3,036.87 |

Computation of Tax

Year: 1941

| | |
|--|-------------|
| Net income adjusted..... | \$14,708.75 |
| Less: Personal exemption | 750.00 |
| Balance (surtax net income)..... | \$13,958.75 |
| Less: Earned income credit (10 per cent of \$3,309.86)..... | 330.99 |
| Net income subject to normal tax..... | \$13,627.76 |
| Normal tax at 4 per cent on \$13,627.76..... | \$ 545.11 |
| Surtax on 13,958.75..... | 2,388.04 |
| Total | \$ 2,933.15 |
| Alternative tax in case of net long-term capital loss.... | \$ 3,036.87 |
| Less: Income tax paid at the source..... | 1.60 |
| Correct income tax liability..... | \$ 3,035.27 |
| Income tax assessed: | |
| Original, account No. 357529-First Calif. District | 979.90 |
| Deficiency of income tax..... | \$ 2,055.37 |
| 5 per cent negligence penalty (5% of \$2,055.37)..... | \$ 102.77 |

[Endorsed]: T.C.U.S. Filed Feb. 2, 1944. [15]

[Title of Tax Court and Cause.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioner, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.
2. Admits the allegations contained in paragraph 2 of the petition.
3. Admits the allegations contained in paragraph 3 of the petition.
4. A to C, inclusive. Denies that the Commissioner erred in the determination of the deficiency, as alleged in subparagraphs A to C, inclusive, of paragraph 4 of the petition.
5. (a) Admits that in 1934 the partnership of Allan M. Standish and Beatrice M. Standish (petitioner and his wife) made a loan of [16] \$5,000.00 to the Yorkville Lumber Company, and that security was later obtained for this loan, together with other loans, but denies the remaining allegations contained in subparagraph (a) of paragraph 5 of the petition.

(b) Denies the allegations contained in subparagraph (b) of paragraph 5 of the petition.

(c) Admits the allegations contained in subparagraph (c) of paragraph 5 of the petition, except it is denied that as a consequence of such death said property vested in Allan M. Standish, the son of decedent, and he came into possession of the same on June 22, 1932, holding one-half of said interest for his own benefit and one-quarter thereof for each of the two minor children of himself and wife.

(d) and (e) Denies the allegations contained in subparagraphs (d) and (e) of paragraph 5 of the petition.

6. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioner's appeal denied.

(Signed) J. P. WENCHEL PMM

Chief Counsel,

Bureau of Internal Revenue.

Of Counsel:

B. H. NEBLETT,

Division Counsel,

T. M. MATHER,

Special Attorney,

Bureau of Internal Revenue.

[Endorsed]: T.C.U.S. Filed Feb. 26, 1944. [17]

The Tax Court of the United States

Docket No. 3950

BEATRICE M. STANDISH,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above-named petitioner hereby petitions for redetermination of the deficiencies set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau symbols IRA:90-D WHL) dated November 8, 1943, and as a basis of her proceedings, alleges as follows:

1. The petitioner is an individual with her residence at Milpitas, California. The return for the period involved was filed with the Collector of the First District of California.

2. The notice of deficiency (copy of which is attached hereto and marked Exhibit "A") was mailed to petitioner on November 8, 1943.

3. The taxes and penalties in controversy are income taxes and five (5) per cent penalties thereon in the following amounts: [18]

| Year | Deficiency | 5% Penalty |
|-------------|------------|------------|
| 1940 | \$ 135.03 | \$ 6.80 |
| 1941 | 2,055.37 | 102.77 |
| <hr/> | | <hr/> |
| Total | \$2,191.40 | \$109.57 |

4. The determination of deficiencies set forth in said notice is based upon the following errors, all

of which relate to the increase in distributable income of the partnership of A. M. Standish and Beatrice M. Standish for the years in question:

A. For the year 1940 the Commissioner erred in determining that said partnership was entitled to "proceeds in liquidation" of \$1,975.31 or in any amount in excess of \$760.00 as a return on a loan made to Yorkville Lumber Company on June 22, 1943 in the amount of \$5,000.00.

B. For the years 1940 and 1941 the Commissioner erred in determining that a penalty should be imposed upon your petitioner by reason of negligence or intentional disregard of rules and regulations, or otherwise. No part of the deficiency being due by reason of such errors, but only by reason of deductions disallowed.

C. For the year 1941 the Commissioner erred in increasing petitioner's income by \$5,256.46 by disallowing the loss of \$10,512.92 claimed as a deduction on the partnership return of petitioner and her husband, Allan M. Standish, with respect to the loss of certain timber properties in the State of Oregon [19] from abandonment and nonpayment of taxes, and particularly erred in determining that "any loss sustained is deductible by the estate of Miles Standish, deceased, or the trust created by him, either prior to death or in his will". The last mentioned determination by the Commissioner is erroneous because the "trust" to which this property was "conveyed" was completely void, and because, no probate proceedings having ever been

commenced in the State of Oregon, the timber property located in that state, and the title thereto, passed to, and was vested in, A. M. Standish immediately upon the death of Miles Standish, and the loss sustained (now believed to be \$7,471.80, rather than \$10,512.92 claimed on the return) was sustained by the partnership as the successor in interest to said timber properties of the said Allan M. Standish, rather than by any estate or trust of, or created by Miles Standish.

5. The facts upon which petitioner relies in support of her proceeding are as follows:

(a) In 1934 the partnership of Allan M. Standish and Beatrice M. Standish (petitioner and her husband) made a loan of \$5,000.00 to the Yorkville Lumber Company. Security was later obtained for this loan, together with other loans. In March of 1940 said security was sold and the partnership advised that its share of the proceeds of \$1,975.31 would be \$760.00. Respondent has applied all of the proceeds of sale, rather than the partnership's share thereof, as an offset to the debt. [20]

(b) Petitioner is informed and believes and therefore alleges the fact to be that no part of the deficiency for either 1940 or 1941 is due to errors of bookkeeping or negligence but that said deficiencies result entirely from deductions disallowed, principally to the partnership of Allan M. & Beatrice Standish, and to increase the income of said partnership.

(c) Miles Standish died a resident of California

on June 22, 1932, and at the time of his death was the owner in fee simple of an undivided one-half interest in certain real property located in Coos and Douglas Counties in the State of Oregon. As a consequence of such death said property vested in Allan M. Standish, the son of decedent, and he came into possession of the same on June 22, 1932, holding one-half of said interest for his own benefit and one-quarter thereof for each of the two minor children of himself and petitioner. At such time the property had a value of \$19,942.25 for the one-half interest owned by Miles Standish as finally determined by the Commissioner in Estate Tax Proceedings on his estate.

(d) Thereafter Allan M. Standish by written agreement with petitioner transferred his one-fourth interest in said lands to the partnership of Allan M. & Beatrice M. Standish and said partners became the owners of, and entered into possession of, the said one-fourth interest in said lands. Thereafter the taxing authorities of said counties imposed such exorbitant taxes on said lands, a lien thereon, that payment thereof did not appear to be justified [21] and in 1941 petitioner and said Allan M. Standish abandoned said lands, permitting them to be finally sold in said year for such taxes. The loss sustained on said one-quarter interest was reduced by prior sales of portions of said lands, interests therein, or timber thereon, to \$7,471.80, as petitioner is informed and believes.

(c) Petitioner is informed and believes and therefore alleges that said loss is deductible, one-

half on the return of herself for 1941, and one-half on the return of said Allan M. Standish for said year, and that the said loss is not that of any estate or trust.

Wherefore, petitioner prays the Court to hear the proceeding, to redetermine the deficiencies in accordance with this petition, and to grant such other and further relief as may be just, meet and proper in the premises.

R. CLARENCE OGDEN

LOUIS JANIN

Counsel for Petitioner [22]

AFFIDAVIT OF VERIFICATION

State of California,

City and County of San Francisco—ss.

Beatrice M. Standish, being first duly sworn, deposes and says:

That she is the petitioner named in and who makes the foregoing petition; that she has read the same and knows the facts stated therein to be true of her own knowledge, except as to those matters therein stated upon information and belief, and as to those matters that she believes it to be true.

BEATRICE M. STANDISH

Subscribed and sworn to before me this 31st day of January, 1944.

[Seal]

LULU P. LOVELAND

Notary Public in and for the City and County of San Francisco, State of California. [23]

EXHIBIT A

Office of
Internal Revenue
Agent in Charge
IRA: 90-D
WHL

Treasury Department
Internal Revenue Service
San Francisco, Calif.
74 New Montgomery Street

Nov. 8, 1943

Mrs. Beatrice M. Standish
Milpitas, California

Madam:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1940 and December 31, 1941 discloses a deficiency of \$2,191.40 and penalties of \$109.57 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency and penalties mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States for a redetermination of the deficiency and penalties.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge,

Seventh Floor, 74 New Montgomery Street, San Francisco 5, California, for the attention of Conference Section. The signing and filing of this form will expedite the closing of your returns by permitting an early assessment of the deficiency, and penalties, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

ROBERT E. HANNEGAN,

By F. M. HARLESS

Internal Revenue Agent in
Charge

Enclosures:

Statement

Form of waiver

STATEMENT

San Francisco

IRA: 90-D

WHL

Mrs. Beatrice M. Standish,
Milpitas, California.

Tax Liability for the Taxable Years Ended December 31, 1940 and December 31, 1941

| Year | Income Tax Liability | Assessed | Deficiency | 5% Penalty |
|--------|-------------------------|------------|------------|---------------|
| 1940 | \$ 336.12 | \$ 200.09 | \$ 136.03 | \$ 6.80 |
| 1941 | 3,035.27 | 979.90 | 2,055.37 | 102.77 |
| Totals | \$3,371.39 | \$1,179.99 | \$2,191.40 | \$109.57 |

In making this determination of your income tax liability, careful consideration has been given to your protest dated April 12, 1943 and to the statements made at the conference held on August 2, 1943.

There is added 5 per centum of the total amount of the deficiency under the provisions of section 293 (a) of the Internal Revenue Code, due to negligence or intentional disregard to rules and regulations.

Adjustments to Net Income

Year: 1940

| | | |
|--|------------|------------|
| Net income as disclosed by return..... | | \$5,968.01 |
| Unallowable deductions and additional income: | | |
| (a) Partnership income | \$1,429.31 | |
| (b) Rental income | 116.66 | 1,545.97 |
| | <hr/> | <hr/> |
| Net income adjusted | | \$7,513.98 |

Explanation of Adjustments

(a) Your distributive share of the net income of the partnership of A. M. and B. M. Standish is increased by \$1,429.31 due to the following adjustments of partnership income:

| | | |
|---|-----------|------------|
| Net income per form 1065 filed by the partnership | | \$6,346.52 |
| Increase: | | |
| 1. Loss from partnership of Standish and Hickey disallowed | \$ 668.31 | |
| 2. Fiduciary loss disallowed..... | 200.00 | |
| 3. Bad debt disallowed..... | 1,215.31 | |
| 4. Damage to orchard disallowed..... | 935.00 | 3,018.62 |
| | <hr/> | <hr/> |
| Total | | \$9,365.14 |

Decrease:

| | |
|--|--------------------------|
| 5. Depreciation allowed | \$ 160.00 |
| Partnership net income as adjusted..... | <u>\$9,205.14</u> |
| Your 50 per cent distributive share..... | \$4,602.57 |
| Amount reported on return..... | <u>3,173.26</u> |
| Increase in partnership income..... | <u><u>\$1,429.31</u></u> |

1. The loss of \$668.31 claimed as resulting from the operation of the partnership of Standish and Hickey is disallowed for the reason that the interest in the partnership is held by the Estate of Miles Standish, Deceased.

2. The deduction of \$200.00 representing a loss sustained by the Estate of Miles Standish, Deceased, is disallowed since such loss is not distributable.

3. Bad debt deduction claimed on a loan made to Yorkville Lumber Company is reduced by \$1,215.31, as follows:

| | |
|-----------------------------------|--------------------------|
| Loan made June 22, 1934..... | \$5,000.00 |
| Proceeds in liquidation..... | <u>1,975.31</u> |
| Bad debt worthless in 1940..... | \$3,024.69 |
| Amount claimed on the return..... | <u>4,240.00</u> |
| Amount disallowed | <u><u>\$1,235.31</u></u> |

4. Deduction of \$935.00 for damage to orchard from blight is disallowed for lack of substantiation.

Additional depreciation of \$160.00 is allowed on buildings, which amount is computed as follows:

| | |
|--|-------------|
| Basis for depreciation 1-1-1935 | \$4,000.00 |
| Less: Depreciation allowed or allowable prior to 1-1-1940 | 960.00 |
| | <hr/> |
| Basis to be recovered 1-1-1940..... | \$3,040.00 |
| | <hr/> |
| Depreciation based on remaining life of 19 years..... | \$ 160.00 |
| | <hr/> <hr/> |

(b) Income from residential property which was converted to rental purposes in 1940 is increased by \$116.66 due to the adjustment of depreciation as shown below:

| | |
|---|-------------|
| Basis for depreciation of building..... | \$10,000.00 |
| Depreciation at 5 per cent for 7 months..... | \$ 291.67 |
| Depreciation claimed | 350.00 |
| | <hr/> |
| Amount disallowed | \$ 58.33 |
| Depreciation on furniture disallowed for lack of substantiation of basis | \$ 175.00 |
| | <hr/> |
| Total disallowed | \$ 233.33 |
| | <hr/> |
| Your one-half share | \$ 116.66 |

Computation of Tax

Year: 1940

| | |
|---|-------------|
| Net income adjusted | \$7,513.98 |
| Less: Personal exemption | 1,544.36 |
| | <hr/> |
| Balance (surtax net income)..... | \$5,969.62 |
| Less: Earned income credit (10% of \$3,000.00)..... | 300.00 |
| | <hr/> |
| Net income subject to normal tax..... | \$5,669.62 |
| | <hr/> <hr/> |

| | |
|--|-----------------------|
| Normal tax at 4 per cent on \$5,669.62..... | \$ 226.78 |
| Surtax on \$5,969.62..... | 78.78 |
| Total | <u>\$ 305.56</u> |
| Defense tax @ 10 per cent..... | <u>30.56</u> |
| Correct income tax liability..... | \$ 336.12 |
| Income tax assessed: | |
| Original, account No. 267920—First Calif. Dist.... | 200.09 |
| Deficiency of income tax | <u>\$ 136.03</u> |
| 5% negligence penalty—(5% of \$136.03)..... | <u><u>\$ 6.80</u></u> |

Adjustments to Net Income

Year: 1941

| | |
|--|---------------------------|
| Net income as disclosed by return..... | \$ 7,665.26 |
| Unallowable deductions and additional income: | |
| (a) Partnership income | <u>7,043.49</u> |
| Net income adjusted | <u><u>\$14,708.75</u></u> |

Explanation of Adjustments

(a) Your distributive share of the net income of the partnership of A. M. & B. M. Standish is increased by \$7,043.49 as shown below: [28]

| | | |
|--|------------------|-------------|
| Net income per form 1065 filed by the partnership | | \$19,011.66 |
| Add: | | |
| 1. Increase in gross profit from busi- ness | \$ 839.76 | |
| 2. Fiduciary loss | 484.95 | |
| 3. Fiduciary loss | 10,512.92 | |
| 4. Income from rents | 1,185.35 | |
| 5. Damage to orchard | 824.00 | |
| 6. Depreciation | 240.00 | |
| | <u>14,086.98</u> | |

| | |
|--|-------------|
| Partnership net income adjusted..... | \$33,098.64 |
| Your 50 per cent distributive share..... | \$16,549.32 |
| Amount reported on your return..... | 9,505.83 |
| Increase in partnership income..... | \$ 7,043.49 |

1. Expenses deducted in computing the gross profit from business include an expenditure of \$839.76 for repair to your residence. This amount is disallowed because it is a personal expense.

2. Deduction claimed for \$484.95 representing the net loss of the Estate of Miles Standish, Deceased is disallowed because such losses are not distributable.

3. The loss of \$10,512.92 claimed as sustained by the Miles Standish Trust upon the loss of certain timber property because of failure to pay taxes owing to the State of Oregon is disallowed on the ground that any loss sustained is deductible by the Estate of Miles Standish, Deceased, or trusts created by him, either prior to death or in his will.

4. Rental income is increased in the amount of \$1,185.35 received during the year 1941 but not reported in the partnership return.

5. Deduction of \$824.00 for damage to orchard from blight is disallowed for lack of substantiation.

6. Depreciation is reduced by \$240.00 based upon the following adjustment: [29]

| | |
|---|-------------|
| Depreciation on rental property: | |
| Per return | \$ 900.00 |
| As adjusted | |
| Depreciation on \$10,000.00 at 5%..... | 500.00 |
| | <hr/> |
| Disallowed | \$ 400.00 |
| Less: Additional depreciation allowed on buildings. | |
| (Depreciation on \$3,040.00 on basis of 19-year | |
| life) | 160.00 |
| | <hr/> |
| Net disallowance | \$ 240.00 |
| | <hr/> <hr/> |

Computation of Alternative Tax

(Section 117 (c)—Internal Revenue Code)

Year: 1941

| | |
|---|-------------|
| Net income | \$14,708.75 |
| Plus: Net long-term capital loss..... | 1,749.28 |
| | <hr/> |
| Ordinary net income | \$16,458.03 |
| Less: Personal exemption | 750.00 |
| | <hr/> |
| Balance (surtax net income)..... | \$15,708.03 |
| Less: Earned income credit | 330.99 |
| | <hr/> |
| Net income subject to normal tax..... | \$15,377.04 |
| | <hr/> |
| Normal tax at 4 per cent on \$15,377.04..... | \$ 615.08 |
| Surtax on 15,708.03..... | 2,946.57 |
| | <hr/> |
| Partial tax | \$ 3,561.65 |
| Minus: 30 per cent of net long-term loss..... | 524.78 |
| | <hr/> |
| Alternative tax | \$ 3,036.87 |
| | <hr/> <hr/> |

Computation of Tax

Year: 1941

| | |
|--|-------------|
| Net income adjusted | \$14,708.75 |
| Less: Personal exemption | 750.00 |
| Balance (surtax net income) | \$13,958.75 |
| Less: Earned income credit (10% of \$3,309.86)..... | 330.99 |
| Net income subject to normal tax..... | \$13,627.76 |
| Normal tax at 4% on \$13,627.76..... | \$ 545.11 |
| Surtax on 13,958.75..... | 2,388.04 |
| Total | \$ 2,933.15 |
| Alternative tax in case of net long-term capital loss..... | \$ 3,036.87 |
| Less: Income tax paid at the source..... | 1.60 |
| Correct income tax liability..... | \$ 3,035.27 |
| Income tax assessed: | |
| Original, account No. 346722—First Calif. Dist.... | 979.90 |
| Deficiency of income tax..... | \$ 2,055.37 |
| 5% negligence penalty (5% of \$2,055.37)..... | \$ 102.77 |

[Endorsed]: T.C.U.S. Filed Feb. 2, 1944. [31]

[Title of Tax Court and Cause.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioner, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Admits the allegations contained in paragraph 3 of the petition.

4. A to C, inclusive. Denies that the Commissioner erred in the determination of the deficiency, as alleged in subparagraphs A to C, inclusive, of paragraph 4 of the petition.

5.(a) Admits that in 1934 the partnership of Allan M. Standish and Beatrice M. Standish (petitioner and her husband) [32] made a loan of \$5,000.00 to the Yorkville Lumber Company and that security was later obtained for this loan, together with other loans, but denies the remaining allegations contained in subparagraph (a) of paragraph 5 of the petition.

(b) Denies the allegations contained in subparagraph (b) of paragraph 5 of the petition.

(c) Admits the allegations contained in subparagraph (c) of paragraph 5 of the petition, except it is denied that as a consequence of such death said property vested in Allan M. Standish, the son of decedent, and he came into possession of the same on June 22, 1932, holding one-half of said interest for his own benefit and one-quarter thereof for each of the two minor children of himself and petitioner.

(d) and (c) Denies the allegations contained in subparagraphs (d) and (c) of paragraph 5 of the petition.

6. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioner's appeal denied.

(Signed) J. P. WENCHEL, TMM

Chief Counsel, Bureau of Internal Revenue.

Of Counsel:

B. H. NEBLETT,

Division Counsel,

T. M. MATHER,

Special Attorney, Bureau of Internal Revenue.

[Endorsed]: T.C.U.S. Filed Feb. 26, 1944. [33]

The Tax Court of The United States

4 T. C. No. 119

A. M. STANDISH,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

BEATRICE M. STANDISH,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket Nos. 3949, 3950

Promulgated March 19, 1945

Held, that a certain trust did not violate the rule against perpetuities—there being an immediate vesting in the beneficiaries as at the date of the death of the trustor of interest both in income and corpus.

R. Clarence Ogden, Esq., for the petitioners.

T. M. Mather, Esq., for the respondent.

The respondent determined deficiencies in the petitioners' income taxes and imposed penalties as follows: [34]

Docket

| No. | Petitioner | Year | Deficiency | Penalty |
|------|----------------------|------|------------|---------|
| 3949 | A. M. Standish | 1940 | \$ 136.05 | \$ 6.80 |
| | A. M. Standish | 1941 | 2,055.37 | 102.77 |
| 3950 | Beatrice M. Standish | 1940 | 136.03 | 6.80 |
| | Beatrice M. Standish | 1941 | 2,055.37 | 102.77 |

The issues are as follows:

(1) The proper amount of a bad debt due from the Yorkville Lumber Company deductible in 1940;

(2) The deductibility in 1941 of a loss from the sale of timber properties for delinquent taxes:

(3) The propriety of a negligence penalty asserted by the respondent.

FINDINGS OF FACT

The petitioners are husband and wife and reside in Milpitas, California. The husband will hereinafter be referred to as the petitioner. They filed their income tax returns for the years 1940 and 1941 with the collector of internal revenue for the first district of California.

The petitioners are partners in the ownership and operation of the property giving rise to the deductions claimed. The partnership was chiefly engaged in the operation of orchards. Its books of account were set up by a public accountant. The petitioner kept the books to the best of his ability. The books for prior years had been examined by the Treasury Department and no complaint has been made against the type of books, the impro-

priety of the method employed or the petitioner's neglect in keeping them.

Miles Standish, father of the petitioner, died on June 22, 1932, a resident of California. At the time of his death, he was the owner [35] in fee simple of an undivided one-half interest in certain real property in Coos County and Douglas County, Oregon, having a value of \$19,462.25 for his half interest, as finally determined by the respondent in estate tax proceedings. The decedent's interest in the Douglas County lands was valued at \$9,201 and in the Coos County lands at \$10,261.25. The Coos County holdings and their respective values were 520 acres of agricultural land, \$14,560; 400 acres of timber land, \$440; 1,000 acres of cut-over lands suitable for reforestation, \$1,000; and 9,045 M feet of Douglas fir timber, \$4,522.50, or a total of \$20,522.50, the decedent's one-half being \$10,261.25. The Douglas County property was all timber land.

In 1941 all the Douglas County land was sold for the nonpayment of taxes and the tracts of the Coos County land suitable for agriculture and the timber land were also sold at tax sales, leaving unsold only the reforestation land. Prior to the tax sale, the petitioner and Henry B. Hickey, the owner of the other undivided one-half interest, had sold lands and timber therefrom for \$3,521.95.

The loss to the Standish interests was \$17,201.28, composed of loss on the Douglas County tax sale (\$9,201) and loss on the Coos County lands (\$8,000.28), computed by subtracting one-half of the value of the reforestation land unsold (\$500)

and one-half of the amount realized from the sale of timber and lands (\$1,760.97) from the original value of the decedent's one-half interest (\$10,-261.25).

On June 17, 1932, Miles Standish executed a deed of trust whose corpus included the Coos County and Douglas County lands. The trust directed that the corpus should be held by the trustees who were to pay the net income therefrom to the grantor during his lifetime, and upon [36] his death, to the petitioner, his wife and two children in designated proportions. The trust instrument contained the following pertinent provisions:

This division of the net proceeds and income from the said property shall continue until the youngest grandchild shall have attained the age of thirty (30) years, when the Trustees shall convey to the Beneficiaries then living, all of the property then remaining in this trust, in such proportion as their respective interests are indicated by the percentages upon which the income has been paid to them, and the trust shall cease.

* * * *

Eighth: In the event that I have any additional grandchild or grandchildren living at the time of my death, the shares of Patricia and Beatrice Standish shall be proportionately reduced so that such additional grandchild or grandchildren shall share equally with them.

Ninth: In the event that any grandchild shall die prior to the time that the respective beneficial interest due said grandchild shall become payable in whole or part as herein provided, then the in-

vested beneficial interest due said grandchild shall revert as follows:

1. If said deceased grandchild shall leave lawful heir of his or her body then such legal heir or heirs shall become the beneficiary in the place and stead of his or her parent by right of representation.

2. In the event any deceased grandchild leaves no legal heirs, then the beneficial interest to which said grandchild would otherwise be entitled shall revert to the equal benefit of the surviving grandchildren, the legal issue of any deceased grandchild to take by representation.

3. In the event that all of said grandchildren die without legal issue prior to the vesting of all of said trust estate, so much as remains shall be paid or delivered to any heirs of the first party under the law of succession as the same exists at the date of this instrument.

In 1941 a fiduciary return was filed for the Miles Standish Trust in which a loss of \$14,943.60 was reported from the sale of the Coos County and Douglas County lands. [37]

Miles Standish left a will dated January 7, 1930, which established a testamentary trust. The will made specific bequests and then contained the following paragraph:

Fourth: I give, devise and bequeath to my said son, Allan M. Standish, all of the residue of my property and estate of every kind and nature, and wherever situate, of which I may die seized or

possessed or in which I may have an interest, in trust, nevertheless, for the following uses and purposes, that is to say: To have, hold, manage and control, bargain, sell, transfer, exchange, invest and reinvest the proceeds thereof; to collect the income therefrom, and out of said income pay over one-half thereof to the Trustees of a certain Trust created by agreement in writing, dated the 7th day of January, 1930, made and executed by Miles Standish, the party of the first part therein named, and Miles Standish and Allan M. Standish, his son, the parties of the second part therein named, their successors and survivors, which said trust agreement is hereby referred to and made a part hereof, in trust, nevertheless, for the use and benefit of my grandchildren, Patricia Standish, and Beatrice Standish, the children of my said son, Allan M. Standish, and for the use and benefit of any other child or children hereafter born to my said son Allan M. Standish, in equal shares, as provided by the terms of said last named Trust, and to pay over the remaining one-half of said income to my said son Allan M. Standish, in his own right and for his own use and benefit; and as fast as said property is sold and the proceeds thereof collected, pay over and distribute the same in the manner and in the same proportions as said income is to be paid over and distributed; * * * in any event, this Trust shall terminate and division of the property shall be made as aforesaid, not later than fifteen (15) years from the date of my death.

The will was not probated in Oregon. No admin-

istrator of the decedent's estate was appointed in that State. The decedent had no debts in Oregon. The will was probated in California on June 29, 1932. The estate was not distributed until July 24, 1942. In the decree ordering the final distribution thereof, the Superior Court of the State of California for Santa Clara County decreed that the petitioner was entitled to one-half of the corpus of the specified property of the estate of his own use and benefit, and the other [38] one-half should go to him in trust for the benefit of his two children, Patricia Standish and Beatrice Standish, at that time adult persons.

In 1934 the petitioner lent \$5,000 to the Yorkville Lumber Company. Hickey also made a loan to it which, in 1940, amounted to \$8,000. The loans by the petitioner and Hickey were secured by a lien on all of the physical assets of the company. The company went out of business, and a trustee sold all of its assets for \$1,975.31. On December 16, 1940, the trustee notified the petitioner that all of the company's assets had been turned into cash and that the petitioner's maximum recovery would be \$760. Later the company denied the validity of the lien, a law suit followed and in 1943 the petitioner and Hickey obtained a judgment for \$1,957.56. On November 1, 1943, the petitioner had expenses against the judgment aggregating \$966.76, leaving an ultimate net recovery of \$990.80 on the judgment. Hickey had previously recovered payments on the debt in which the petitioner had not shared. Accordingly, Hickey's executors agreed to a settle-

ment whereby the petitioner received the entire amount of the judgment.

The respondent held that "the loss of \$10,512.92 claimed as sustained by the Miles Standish Trust upon the loss of certain timber property because of failure to pay taxes owing to the State of Oregon is disallowed on the ground that any loss sustained is deductible by the Estate of Miles Standish, Deceased, or trusts created by him, either prior to death or in his will."

The respondent also reduced the bad debt deduction claimed on a loan made to Yorkville Lumber Company by \$1,215.31, computed as follows: [39]

| | |
|-----------------------------------|------------------|
| Loan made June 22, 1934..... | \$5,000.00 |
| Proceeds in liquidation | 1,975.31 |
| <hr/> | |
| Bad debt worthless in 1940..... | \$3,024.69 |
| Amount claimed on the return..... | 4,240.00 |
| <hr/> | |
| Amount disallowed | \$1,235.31 (sic) |

OPINION

Van Fossan, Judge: We consider first the issue as to the correct amount of the bad debt against the Yorkville Lumber Company which became worthless in 1940. The petitioner claimed a loss of \$4,240, based on the recovery of \$760 as the partnership's share of the amount paid to the trustee in that year. The respondent charged against the loss of the original loan of \$5,000 the entire amount, (\$1,975.31) of the payment held by the trustees.

The petitioner's contention is supported by the record. The evidence is uncontroverted that on

December 16, 1940, the trustee had sold all of the assets of the company and that the company had no other source from which its debt to the petitioner and Hickey could be paid. The trustee held the fund for the benefit of the petitioner and Hickey. The worthlessness of the debt was definitely established at that time. Hickey and the petitioner were the creditors to whom the amount of the recovery was payable in the proportions then known and accepted as the basis of the division between them.

The subsequent suit resulting in judgment and the adjustment made between the petitioner and Hickey's executor relating to items not in the record, are not pertinent to the issue. The respondent has overlooked the fact that the recovery in 1940 was for the benefit of both the petitioner and Hickey and has misstated the amount of the "proceeds of [40] liquidation." The partnership is entitled to the deduction of the bad debt in the sum of \$4,240.27 (\$5,000 minus five-thirteenths of \$1,975.31). If any part of the ultimate net recovery in 1943 represented income to petitioner it was a matter for accounting in that year.

The second issue calls into question the validity of a trust instrument executed by Miles Standish on June 17, 1932, and also the effect of a testamentary trust established by the will of Miles Standish. The petitioner contends that the provisions of the first trust were void as violating the rule against perpetuities and that no testamentary trust was set up as to the residue devised to Allan Standish under

Paragraph Fourth of the will. He argues that the will makes a direct devise of one-half of the estate to him as held by the California court. He does not discuss the status of the other half but appears to concede that the will created a trust as to it.

The respondent argues that no judicial determination of the validity of the inter vivos trust (of June 17, 1932) has been made; that the trust did not violate the rule against perpetuities; that in case the trust should be declared invalid by this Court the property would revert to Miles Standish, subject to the testamentary disposition made by the will; and that the fact that the beneficiaries entitled to the trust income may ultimately receive the corpus does not invalidate the trust.

It appears clear that if the trust of June 17, 1932, did not violate the rule against perpetuities, as contended by the petitioners, a valid trust was created, which trust fixed the ownership of the [41] property in question and accordingly fixes the liability for income taxes and the rights to losses arising from such property. For aught that appears, the trust has been in effect for all the years since its creation and has been recognized by the parties, the present instance being the only time its validity has been questioned.

It is elemental that the law favors the vesting of estates. It is also elemental that the law tends to support the intention of a grantor or a trustor, if such intention can be ascertained. Here it is obvious that by the trust Miles Standish was planning the future of his son Allan and his wife and

their two children. The same intention involving the same parties is evident in his will dated two years prior. By the trust he left the income as at the date of his death (which occurred five days later) 51 per cent to Allan Standish, 17 per cent to Beatrice M. Standish (Allan's wife) and 16 per cent each to the two grandchildren, Patricia and Beatrice. This was to continue until the youngest grandchild became 30 years of age, when the trustee was to convey the corpus of the trust to the beneficiaries then living, in the same proportions as the income payments. Any additional grandchild living at the date of the death of the trustor was to share equally with those then living.

In *Simes Law of Future Interests*, Vol. II, page 103, appears the following:

Sec. 356. Intermediate Gift of Income.

An intermediate gift of the income to the legatee or devisee who is to receive the ultimate gift on attaining a given age is an important element tending to show that the gift is vested and not contingent. This would seem to be for the reason that the gift of income shows that the testator intended the legatee or devisee to take some benefit [42] from the gift of the principal immediately on the testator's death, and that the postponement of possession was merely for the benefit of the donee. The same presumption in favor of the vested character of the gift obtains where only a portion of the income is to be given for maintenance.

The following statement from the opinion of the

Pennsylvania Supreme Court in Appeal of Reed, 118 Pa. St. 215, 11 Atl. 787, is also in point:

* * * And while it is true as a general rule, as before observed, that where the time or other condition is annexed to the substance of the gift and not merely to the payment, the legacy is contingent, yet it is equally true that a well recognized exception to the rule is, that where interest, whether by way of maintenance or otherwise, is given to the legatee in the meantime, the legacy shall, notwithstanding the gift appears to be postponed, vest immediately on the death of the testator.

It is clear that there was a vesting in possession of the beneficiaries of the income of the trust as of the date of the grantor's death. We are of the opinion that by the terms of the trust, under the law, there was also, as of that date, an immediate vesting of interest in the corpus or remainder. The fact that as of the date of the trust there was a possibility of divesting of the estates of the grandchildren and a redistribution to accommodate an after-born child does not affect the vesting or make it contingent. It is our opinion that, looking to the four corners of the trust, the grantor contemplated immediate vesting of interest of the corpus of the property in the several beneficiaries.

The consequence of our ruling that the property had vested as of the date of the grantor's death is that petitioners are not entitled to deduct the loss sustained on the Coos County and Douglas County properties. [43]

The situation is not, in any wise, affected by the

decree of the California Court of Probate entered in 1942. This adjudication dealt with wholly different specified property and does not purport to deal with or affect in any way the property here in question.

The record discloses no evidence to warrant the imposition of penalties for "negligence or intentional disregard to rules and regulations," as charged by the respondent. The petitioners disclaimed any such act or intent. The notices of deficiency reveal no more than the ordinary difference of opinion between taxpayers and the Treasury Department. Therefore, no such penalties will attach.

Reviewed by the Court.

Decisions will be entered under Rule 50. [44]

The Tax Court of the United States
Washington
Docket No. 3949

A. M. STANDISH,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the opinion of the Court promulgated March 19, 1945, the respondent, on April 17, 1945,

filed a proposed computation of tax in the above entitled proceeding and the case having been called for hearing on June 20, 1945, at which time no objection was offered to the respondent's recomputation, it is

Ordered and Decided: That there are deficiencies in income tax for the years 1940 and 1941 in the respective amounts of \$82.57 and \$2,055.37.

Enter:

Entered June 20, 1945.

[Seal] (s) ERNEST H. VAN FOSSAN,
Judge. [45]

The Tax Court of the United States
Washington

Docket No. 3950

BEATRICE M. STANDISH,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the opinion of the Court promulgated March 19, 1945, the respondent filed a proposed computation of tax on April 17, 1945, and the proceeding having been called for hearing on June 20,

1945, at which time no objection was offered to the respondent's recomputation, it is

Ordered and Decided: That there are deficiencies in income tax for the years 1940 and 1941 in the respective amounts of \$82.54 and \$2,055.37.

Enter:

Entered June 20, 1945.

[Seal] (s) ERNEST H. VAN FOSSAN,
Judge. [46]

In the United States Circuit Court of Appeals
for the Ninth Circuit

Docket No. 3949

In the Matter of

A. M. STANDISH,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR REVIEW OF DECISION OF
THE TAX COURT OF THE UNITED
STATES BY THE UNITED STATES CIR-
CUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

A. M. Standish, your petitioner, pursuant to the
provisions of Sections 1141 and 1142 of the Internal

Revenue Code respectfully petitions this Honorable Court to review the decision of The Tax Court of the United States entered on the 20th day of June, 1945, and finding deficiencies in income tax, together with additional tax under the provisions of the Internal Revenue Code (Sect. 272) in the total amount of \$82.57 for the year 1940, and the total amount of \$2055.37 for the year 1941.

I.

JURISDICTION

Your petitioner is a citizen of The United States of America having, during the taxable years involved, and now having his residence and place of business in the County of Santa Clara [47] State of California. Petitioner timely filed his Federal income tax returns in respect to which the aforementioned tax liabilities arose with the Collector of Internal Revenue, First District of California, located in the City and County of San Francisco, State of California, which is situate within the jurisdiction of The United States Circuit Court of Appeals for the Ninth Judicial Circuit.

II.

PRIOR PROCEEDINGS

The Commissioner of Internal Revenue by his letter dated November 8, 1943, asserted a deficiency in petitioner's tax liability for the year 1940 in the sum of \$135.05 and a penalty of five per centum in the amount of \$6.80. He also asserted a deficiency

in petitioner's tax liability for the year 1941 in the sum of \$2,055.37 and a penalty of five per centum in the amount of \$102.77.

Thereafter, and within the time prescribed by law, the petitioner filed with The Tax Court of The United States his petition under the aforesaid letter requesting the redetermination of such deficiencies. The proceedings duly came on for hearing on September 19, 1944, at which time the hearing of the petition of this petitioner was consolidated with the hearing of a petition theretofore filed by Beatrice M. Standish. The proceedings were submitted to The Tax Court of The United States upon oral testimony of witnesses and documentary evidence applicable to the two proceedings.

Thereafter, and on March 10, 1945, The Tax Court of The United States made its report and rendered a memorandum opinion [48] approving in part the determinations of the Commissioner.

Thereafter and on June 20, 1945, decisions were made and entered in each of the two proceedings by The Tax Court of The United States whereby final orders of redetermination of deficiencies for the respective years involved were made and entered in each of said proceedings as follows:

| Year | Deficiency in Income Tax |
|------------|-----------------------------|
| 1940 | \$ 82.57 |
| 1941 | 2055.37 |

III.

STATEMENT OF THE NATURE OF
THE CONTROVERSY

This proceeding is for the years 1940 and 1941 (Docket #3949) and involves income tax and a five per centum penalty for asserted negligence under Section 293 (a) of the Internal Revenue Code.

The controversy between petitioner (appellant before this Court) and the Commissioner of Internal Revenue involved several issues which by reason of the decision made and entered by The Tax Court of the United States, have been reduced to two.

1. Whether a trust instrument executed by Miles Standish on June 17, 1932, was valid, or was void because the provisions thereof violated the rule against perpetuities.

2. Whether the testamentary trust set up as to the residue by the Will of Miles Standish under paragraph "Fourth" of the Will was effective as to the share of said residue devised and bequeath to Allan Standish, or, was the share of said residue so devised and bequeathed to Allan Standish vested in Allan Standish free of any trust. [49]

IV.

ASSIGNMENTS OF ERROR

In assigning the errors which petitioner believes to have been committed by The Tax Court of The United States, petitioner assigns as error the following acts or omissions of the said The Tax Court of The United States:

(1) The failure to determine that the trust instrument dated June 17, 1932, and executed by Miles Standish, by its provisions and in particular by the provisions set forth verbatim in the said report or memorandum opinion of The Tax Court of The United States, violated the rule against perpetuities as said rule is applicable in the States of California and Oregon.

(2) The erroneous determination that the trust instrument of June 17, 1932 effected a valid inter vivos transfer of title to the timber lands more particularly described therein.

(3) Failure to find and determine that the said trust instrument of date June 17, 1932, reserved the proceeds and income from the property covered by said instrument to the trustor during his lifetime.

(4) The failure to find and determine that under the provisions of paragraph "Fourth" of the Last Will of Miles Standish, deceased, there vested upon the testator's death a one-half interest in the residue of testator's property (which included Coos County and Douglas County, Oregon, lands) in A. M. Standish as his individual property, free of any trust.

(5) The failure to find and determine that the loss sustained from the abandonment and non-payment of taxes upon the said lands situate in Coos and Douglas Counties, State of [50] Oregon, is deductible from the partnership income as set forth in the partnership return of this petitioner and his wife, Beatrice M. Standish, filed for the taxable year 1941; and that such loss is not deductible from the income

of the estate of Miles Standish, deceased, or the income of any trust created by said Miles Standish either prior to his death or under his Will.

(6) The failure to find and determine that the said loss in the sum of \$7,741.80 resulting from the abandonment and non-payment of taxes upon the undivided interest in the timber properties located in Coos and Douglas Counties, State of Oregon, was sustained by the partnership composed of A. M. Standish and Beatrice M. Standish, as the successor in interest in the said undivided interest in said timber lands of the said A. M. Standish rather than by any estate or trust of, or created by, Miles Standish.

(7) In making the determination complained of in assignment 2 hereinabove set forth, the failure to make any finding that under the provisions of the trust instrument executed on June 17, 1932, by Miles Standish, the said Miles Standish reserved to himself for the balance of his lifetime, the proceeds from the sale of and the income derived from the assets purported to have been conveyed by said trust instrument; and that the provisions of said trust instrument did not effect an intermediate gift of the income to any of the persons who under the provisions thereof is to receive the ultimate gift on obtaining a given age.

(8) The failure to find and determine that by the provisions of the said trust instrument of date June 17, 1932, no interest is given to the beneficiaries during the lifetime of the [51] trustor.

(9) The finding and determination that: "the

fact that as of the date of the trust there was a possibility of the divesting of the estates of the grandchildren and a redistribution to accommodate an after-born child, does not effect the vesting or make it, (the gift) contingent."

(10) In finding and determining that the grantor, Miles Standish, contemplated immediate vesting of interest of the corpus of the property in the several beneficiaries at the time of the execution of the said trust instrument on June 17, 1932.

(11) In determining that this petitioner is not entitled to deduct the loss sustained on the Coos County and Douglas County properties.

(12) In determining that the situation is not in any wise effected by the decree of the California Court of Probate entered in 1942; and that said adjudication does not effect in any way title to the properties in Coos and Douglas Counties, Oregon.

(13) The intermingling of findings of fact, conclusions as to the facts and conclusions of law, in such manner as to render the decision of the Board in its report or memorandum opinion arbitrary and contrary to law.

Wherefore, Your petitioner prays that the decision of The Tax Court of The United States be reviewed by The United States Circuit Court of Appeals for the Ninth Circuit; that a transcript of the record be prepared in accordance with law, and the rules of said court for filing, and that appropriate action be taken to the end that the er-

rors complained of herein [52] be reviewed and corrected by said Court.

A. M. STANDISH,
Petitioner.

R. CLARENCE OGDEN,
Counsel for Petitioner.

State of California,

City and County of San Francisco—ss.

A. M. Standish, being first and duly sworn, says:

I am the Petitioner and Appellant above named; I have read the foregoing Petition for Review and know the contents thereof, and the facts set forth therein are true as I verily believe; that said Petition is filed in good faith and not for the purpose of delay.

A. M. STANDISH.

Subscribed and sworn to Sept. 8th, 1945.

[Seal] LULU P. LOVELAND,

Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires August 27, 1947. [53]

In the Tax Court of the United States

Docket No. 3949

In the Matter of:

A. M. STANDISH,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To the Commissioner of Internal Revenue, and to
J. P. Wenchel, Chief Counsel, Attorney for
Respondent, Bureau of Internal Revenue
Building, Washington, D. C.:

You are hereby notified that on the 12th day of
September, 1945, a petition for review by The
United States Circuit Court of Appeals for the
Ninth Circuit, of the decision of The Tax Court of
The United States, heretofore rendered in the above
entitled cause, was mailed to the Clerk of Said
Court; a copy of the Petition as filed is attached
hereto and served upon you.

Dated: September 12th, 1945.

R. CLARENCE OGDEN,
Attorney for Petitioner.

Service of the foregoing Notice of Filing and a
copy of the petition for review is hereby acknowl-
edged this day of September, 1945.

.....
Chief Counsel, Bureau of Internal Revenue, At-
torney for Respondent. [54]

[Title of Tax Court and Cause.]

AFFIDAVIT OF SERVICE BY MAIL

State of California,

City and County of San Francisco—ss.

Florence Easley, being first duly sworn, deposes and says:

That she is a citizen of the United States over the age of 21 years and not a party to the above entitled proceedings; that on the 12th day of September, 1945, she deposited in the United States Post Office in San Francisco, California, addressed to the Commissioner of Internal Revenue, Internal Revenue Building, Washington, D. C., a copy of Petition for Review in the above entitled proceedings; together with Notice of Mailing Petition for Review addressed to said Commissioner of Internal Revenue, and to J. P. Wenchel, Chief Counsel, attorney for Commissioner; that said copy of Petition and Notice were enclosed in an envelope addressed to the Chief Counsel of Commissioner of Internal Revenue, Internal Revenue Building, Washington, D. C., with postage prepaid thereon.

FLORENCE EASLEY.

Subscribed and sworn to before me this 12th day of September, 1945.

[Seal]

LULU P. LOVELAND,

Notary Public in and for the City and County of San Francisco, State of California.

My commission expires August 27, 1947.

[Endorsed]: T.C.U.S. Filed Sept. 17, 1945. [55]

In the United States Circuit Court of Appeals
for the Ninth Circuit

Docket No. 3950

In the Matter of:

BEATRICE M. STANDISH,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR REVIEW OF DECISION OF
THE TAX COURT OF THE UNITED
STATES BY THE UNITED STATES CIR-
CUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Cir-
cuit:

Beatrice M. Standish, your petitioner, pursu-
ant to the provisions of Sections 1141 and 1142 of
the Internal Revenue Code respectfully petitions
this Honorable Court to review the decision of The
Tax Court of The United States entered on the
20th day of June, 1945, and finding deficiencies in
income tax, together with additional tax under
the provisions of the Internal Revenue Code (Sect.
272) in the total amount of \$82.57 for the year
1940, and the total amount of \$2055.37 for the
year 1941.

I.

JURISDICTION

Your petitioner is a citizen of the United States of America, having, during the taxable years involved, and now having [56] her residence and place of business in the County of Santa Clara, State of California. Petitioner timely filed her Federal income tax returns in respect to which the aforementioned tax liabilities arose with the Collector of Internal Revenue, First District of California, located in the City and County of San Francisco, State of California, which is situate within the jurisdiction of The United States Circuit Court of Appeals for the Ninth Judicial Circuit.

II.

PRIOR PROCEEDINGS

The Commissioner of Internal Revenue by his letter dated November 8, 1943, asserted a deficiency in petitioner's tax liability for the year 1940 in the sum of \$135.05 and a penalty of five per centum in the amount of \$6.80. He also asserted a deficiency in petitioner's tax liability for the year 1941 in the sum of \$2,055.37 and a penalty of five per centum in the amount of \$102.77.

Thereafter, and within the time prescribed by law, the petitioner filed with The Tax Court of The United States her petition under the aforesaid letter requesting the redetermination of such deficiencies. The proceedings duly came on for hearing on September 19, 1944, at which time the hearing

of the petition of this petitioner was consolidated with the hearing of a petition theretofore filed by A. M. Standish. The proceedings were submitted to The Tax Court of The United States upon oral testimony of witnesses and documentary evidence applicable to the two proceedings.

Thereafter, and on March 19, 1945, The Tax Court of [57] The United States made its report and rendered a memorandum opinion approving in part the determinations of the Commissioner.

Thereafter and on June 20th, 1945, decisions were made and entered in each of the two proceedings by The Tax Court of the United States whereby final orders of redetermination of deficiencies for the respective years involved were made and entered in each of said proceedings as follows:

| Year | Deficiency in Income Tax |
|------------|-----------------------------|
| 1940 | \$ 82.57 |
| 1941 | 2055.37 |

III.

STATEMENT OF THE NATURE OF THE CONTROVERSY

This proceeding is for the years 1940 and 1941 (Docket #3950) and involves income tax and a five per centum penalty for asserted negligence under Section 293 (a) of the Internal Revenue Code.

The controversy between petitioner (appellant before this court) and the Commissioner of Internal Revenue involved several issues which by

reason of the decision made and entered by The Tax Court of The United States, having been reduced to two.

1. Whether a trust instrument executed by Miles Standish on June 17, 1932, was valid, or was void because the provisions thereof violated the rule against perpetuities.

2. Whether the testamentary trust set up as to the residue by the Will of Miles Standish under paragraph "Fourth" of the Will was effective as to the share of said residue devised and bequeathed to Allan M. Standish, or, was the share of said residue so devised and bequeathed to Allan Standish vested in [58] Allan Standish free of any trust.

IV.

ASSIGNMENTS OF ERROR

In assigning the errors which petitioner believes to have been committed by The Tax Court of The United States, petitioner assigns as error the following acts or omissions of the said The Tax Court of The United States:

(1) The failure to determine that the trust instrument dated June 17, 1932, and executed by Miles Standish, by its provisions and in particular by the provisions set forth verbatim in the said report or memorandum opinion of The Tax Court of the United States, violated the rule against perpetuities as said rule is applicable in the States of California and Oregon.

2. The erroneous determination that the trust instrument of June 17, 1932, effected a valid *inter vivos* transfer of title to the timber lands more particularly described therein.

(3) Failure to find and determine that the said trust instrument of date June 17, 1932, reserved the proceeds and income from the property covered by said instrument to the trustor during his lifetime.

(4) The failure to find and determine that under the provisions of paragraph "Fourth" of the Last Will of Miles Standish, there vested upon the testator's death a one-half interest in the residue of testator's property (which included Coos County and Douglas County, Oregon, lands) in A. M. Standish as his individual property, free of any trust.

(5) The failure to find and determine that the loss sustained from the abandonment and non-payment of taxes upon the [59] said lands situate in Coos and Douglas Counties, State of Oregon, is deductible from the partnership income as set forth in the partnership return of this petitioner and her husband, A. M. Standish, filed for the taxable year 1941; and that such loss is not deductible from the income of the estate of Miles Standish, deceased, or the income of any trust created by said Miles Standish either prior to his death or under his Will.

(6) The failure to find and determine that the said loss in the sum of \$7,741.80 resulting from the

abandonment and non-payment of taxes upon the undivided interest in the timber properties located in Coos and Douglas Counties, State of Oregon, was sustained by the partnership composed of A. M. Standish and Beatrice M. Standish, as the successor in interest in the said undivided interest in said timber lands of the said A. M. Standish rather than by any estate or trust of, or created by, Miles Standish.

(7) In making the determination complained of in assignment 2 hereinabove set forth, the failure to make any finding that under the provisions of the trust instrument executed on June 17, 1932, by Miles Standish, the said Miles Standish reserved to himself for the balance of his lifetime, the proceeds from the sale of and the income derived from the assets purported to have been conveyed by said trust instrument; and that the provisions of said trust instrument did not affect an intermediate gift of the income to any of the persons who under the provisions thereof is to receive the ultimate gift on obtaining a given age.

(8) The failure to find and determine that by the provisions of the said trust instrument of date June 17, 1932, no [60] interest is given to the beneficiaries during the lifetime of the trustor.

(9) The finding and determination that: "the fact that as of the date of the trust there was a possibility of the divesting of the estates of the grandchildren and a redistribution to accommodate an after-born child, does not affect the vesting or make it (the gift) contingent."

(10) In finding and determining that the grantor, Miles Standish, contemplated immediate vesting of interest of the corpus of the property in the several beneficiaries at the time of the execution of the said trust instrument on June 17, 1932.

(11) In determining that this petitioner is not entitled to deduct the loss sustained on the Coos County and Douglas County properties.

(12) In determining that the situation is not in any wise affected by the decree of the California Court of Probate entered in 1942; and that said adjudication does not affect in any way title to the properties in Coos and Douglas Counties, Oregon.

(13) The intermingling of findings of fact, conclusions as to the facts and conclusions of law, in such manner as to render the decision of the Board in its report or memorandum opinion arbitrary and contrary to law.

Wherefore, Your petitioner prays that the decision of The Tax Court of The United States be reviewed by The United States Circuit Court of Appeals for the Ninth Circuit; that a transcript of the record be prepared in accordance with law, and the rules of said court for filing, and that appropriate action be taken to the end that the errors complained of herein be [61] reviewed and corrected by said Court.

BEATRICE M. STANDISH,
Petitioner.

R. CLARENCE OGDEN,
Counsel for Petitioner.

State of California,
County of San Francisco—ss.

Beatrice M. Standish, being first and duly sworn,
says:

I am the petitioner and appellant above named;
I have read the foregoing Petition for Review and
know the contents thereof, and the facts set forth
therein are true as I verily believe; that said peti-
tion is filed in good faith and not for purpose of
delay.

BEATRICE M. STANDISH.

Subscribed and sworn to Sept. 8th, 1945.

[Seal] LULU P. LOVELAND,
Notary Public in and for the City and County
of San Francisco, State of California.

My commission expires August 27, 1947. [62]

In the Tax Court of the United States

Docket No. 3950

In the Matter of

BEATRICE M. STANDISH,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To Commissioner of Internal Revenue, and to J. P.
Wenchel, Chief Counsel, Attorney for Respond-
ent, Bureau of Internal Revenue Building,
Washington, D. C.:

You are hereby notified that on the 12th day of September, 1945, a Petition for Review by The United States Circuit Court of Appeals for the Ninth Circuit, of the decision of The Tax Court of the United States, heretofore rendered in the above entitled cause, was mailed to the Clerk of said Court, a copy of the Petition as filed is attached hereto and served upon you.

Dated: September 12th, 1945.

R. CLARENCE OGDEN,
Attorney for Petitioner.

Service of the foregoing Notice of Filing and a copy of the petition for review is hereby acknowledged this day of September, 1945.

.....

Chief Counsel, Bureau of Internal Revenue, Attorney for Respondent. [63]

[Title of Tax Court and Cause.]

AFFIDAVIT OF SERVICE BY MAIL

State of California,
City and County of San Francisco—ss.

Florence Easley, being first duly sworn, deposes and says:

That she is a citizen of the United States over the age of 21 years and not a party to the above entitled proceedings; that on the 12th day of September, 1945, she deposited in the United States Post Office in San Francisco, California, addressed

to the Commissioner of Internal Revenue, Internal Revenue Building, Washington, D. C., a copy of Petition for Review in the above entitled proceedings; together with Notice of Mailing Petition for Review addressed to said Commissioner of Internal Revenue, and to J. P. Wenchel, Chief Counsel, attorney for Commissioner; that said copy of Petition and Notice were enclosed in an envelope addressed to the Chief Counsel of Commissioner of Internal Revenue, Internal Revenue Building, Washington, D. C., with postage prepaid thereon.

FLORENCE EASLEY,

Subscribed and sworn to before me this 12th day of September, 1945.

[Seal] LULU P. LOVELAND,
Notary Public in and for the City and County
of San Francisco, State of California.

My commission expires August 27, 1947.

[Endorsed]: T.C.U.S. Filed Sept. 17, 1945. [64]

[Title of Tax Court and Cause—No. 3949.]

STATEMENT OF POINTS ON WHICH PETITIONER INTENDS TO RELY

In compliance with paragraph (d) of Rule 75 of the Rules of Civil Procedure for the District Court of The United States as made applicable for review of a decision of The Tax Court of The United States by Rule 30 of the Rules of the United States Circuit Court of Appeals for the Ninth Circuit, the

above named petitioner herewith states the points on which he intends to rely on the pending petition for review of the decision of said The Tax Court of The United States in the above entitled proceedings.

Petitioner will rely upon all of the assignments of error set forth in the petition for review of the decision in the above entitled proceedings by The United States Circuit Court of Appeals for the Ninth Circuit, filed with The Tax Court of the United States on September 17th, 1945.

1. The Tax Court of The United States erred in determining that for the year 1941 petitioner was not entitled to deduct [65] the loss reported in the partnership return of Beatrice M. Standish and this petitioner resulting from the abandonment and non-payment of taxes upon the undivided interest in the timber properties located in Coos and Douglas Counties, State of Oregon, in the sum of \$7,741.80.

2. The Tax Court of The United States erred in determining that the loss resulting from the abandonment and tax sale for non-payment of taxes of the timber lands above mentioned was the loss of a trust estate created by Miles Standish by trust instrument dated June 17, 1932, was not the loss sustained by the partnership of Beatrice M. Standish and this petitioner.

3. The Tax Court of The United States erred in the failing to allow the petitioner a deduction for his half of said loss in the sum of \$7,741.80 re-

sulting from the abandonment and tax sale for non-payment of taxes of the 25% interest owned by said partnership in the said timber lands located in Coos and Douglas Counties, State of Oregon, for the taxable year 1941.

4. The Tax Court of The United States erred in finding and determining that "the fact that as of the date of the trust there was a possibility of the divesting of the estates of the grandchildren and a redistribution to accommodate an after-born child, does not affect the vesting or make it contingent."

5. The Tax Court of The United States erred in finding and determining that Miles Standish, the grantor named in that trust instrument dated June 17, 1932, "contemplated immediate vesting of interest of the corpus of the property in the several beneficiaries."

6. That The Tax Court of The United States erred in [66] the determining that "the consequence of our ruling that the property had vested as of the date of grantor's death is that petitioners are not entitled to deduct the loss sustained on the Coos and Douglas Counties properties."

7. That The Tax Court of The United States erred in finding and determining that "the situation is not, in any wise, affected by the decree of the California Court of Probate entered in 1942. This adjudication dealt with wholly different specified property and does not purport to . . . affect in any way the property here in question."

8. The Tax Court of The United States further erred in failing to make findings of fact in conformance with the evidence and in intermingling as to the findings of fact, facts, conclusions as to facts, and conclusions of law in such manner as to conflict with the facts and the law:

(a) In failing to find that the trust instrument of date June 17, 1932, by its terms reserved to the grantor and trustor a beneficial interest in the trust property for the balance of the trustor's life, and did not vest in any of the beneficiaries who, under the provisions thereof is to receive the ultimate gift on obtaining a given age, any interest in said trust property until the death of the trustor.

(b) In failing to find and to conclude from the facts that by the provisions of the said trust instrument of date June 17, 1932, no interest is given to the beneficiaries who are to receive the ultimate gift on obtaining a given age, during the lifetime of the trustor. [67]

(c) In failing to find or conclude from the facts that the grantor, Miles Standish, did not, at the time he executed the trust instrument of date June 17, 1932, contemplate immediate vesting of interests of the corpus of the trust property in the several beneficiaries who were to receive the ultimate gift on obtaining a given age.

Respectfully submitted,

R. CLARENCE OGDEN,

Attorney for Petitioner.

Admission of service of the foregoing Statement of Points on which Petitioner intends to Rely is hereby admitted this day of September, 1945.

.....

Chief Counsel, Bureau of Internal Revenue, Attorney for Respondent.

[Endorsed]: T.C.U.S. Filed Sept. 27, 1945. [68]

[Title of Tax Court and Cause—No. 3950.]

STATEMENT OF POINTS ON WHICH
PETITIONER INTENDS TO RELY

In compliance with paragraph (d) of Rule 75 of the Rules of Civil Procedure for the District Court of The United States as made applicable for review of a decision of The Tax Court of The United States by Rule 30 of the Rules of the United States Circuit Court of Appeals for the Ninth Circuit, the above named petitioner herewith states the points on which she intends to rely on the pending petition for review of the decision of said The Tax Court of The United States in the above entitled proceedings.

Petitioner will rely upon all of the assignments of error set forth in the petition for review of the decision in the above entitled proceedings by The United States Circuit Court of Appeals for the Ninth Circuit, filed with The Tax Court of the United States on September 17th 1945.

1. The Tax Court of The United States erred

in determining that for the year 1941 petitioner was not entitled to deduct the loss reported in the partnership return of A. M. Standish and this petitioner resulting from the abandonment and [69] non-payment of taxes upon the undivided interest in the timber properties located in Coos and Douglas Counties, State of Oregon, in the sum of \$7,741.80.

2. The Tax Court of The United States erred in determining that the loss resulting from the abandonment and tax sale for non-payment of taxes of the timber lands above mentioned was the loss of a trust estate created by Miles Standish by trust instrument dated June 17, 1932 was not the loss sustained by the partnership of A. M. Standish and this petitioner.

3. The Tax Court of The United States erred in the failing to allow the petitioner a deduction for her half of said loss in the sum of \$7,741.80 resulting from the abandonment and tax sale for non-payment of taxes of the 25% interest owned by said partnership in the said timber lands located in Coos and Douglas Counties, State of Oregon for the taxable year 1941.

4. The Tax Court of The United States erred in finding and determining that "the fact that as of the date of the trust there was a possibility of the divesting of the estates of the grandchildren and a redistribution to accommodate an afterborn child, does not affect the vesting or make it contingent."

5. The Tax Court of The United States erred in finding and determining that Miles Standish, the grantor named in that trust instrument dated June 17, 1932 "contemplated immediate vesting of interest of the corpus of the property in the several beneficiaries."

6. That The Tax Court of The United States erred in determining that "the consequence of our ruling that the property had vested as of the date of grantor's death is that [70] petitioners are not entitled to deduct the loss sustained on the Coos and Douglas Counties properties."

7. That The Tax Court of The United States erred in finding and determining that "the situation is not, in any wise, affected by the decree of the California Court of Probate entered in 1942. This adjudication dealt with wholly different specified property and does purport to . . . affect in any way the property here in question."

8. The Tax Court of The United States further erred in failing to make findings of fact in conformance with the evidence and in intermingling as to the findings of fact, facts, conclusions as to facts, and conclusions of law in such manner as to conflict with the facts and the law:

(a) In failing to find that the trust instrument of date June 17, 1932 by its terms reserved to the grantor and trustor a beneficial interest in the trust property for the balance of the trustor's life, and did not vest in any of the beneficiaries who, under the provisions thereof is to receive the ulti-

mate gift on obtaining a give age, any interest in said trust property until the death of the trustor.

(b) In failing to find and to conclude from the facts that by the provisions of the said trust instrument of date June 17 1932 no interest is given to the beneficiaries who are to receive the ultimate gift on obtaining a given age, during the lifetime of the trustor.

(c) In failing to find or conclude from the facts that the grantor, Miles Standish, did not, at the time he executed the trust instrument of date June 17, 1932, contemplate immediate [71] vesting of interest of the corpus of the trust property in the several beneficiaries who were to receive the ultimate gift on obtaining a given age.

Respectfully submitted,

R. CLARENCE OGDEN

Attorney for Petitioner

Admission of service of the foregoing Statement of Points on which Petitioner intends to Rely is hereby admitted this day of September, 1945.

.....

Chief Counsel, Bureau of Internal Revenue, Attorney for Respondent

[Endorsed]: T.C.U.S. Filed Sept. 27, 1945. [72]

EVIDENCE

Exhibit "A" Part of Reporter's Transcript
For Record on Review

EXCERPTS FROM PROCEEDINGS

The Clerk: At this time we call Docket 3949 and Docket 3950, A. M. Standish and Beatrice M. Standish.

Will you state your appearances for the record, please?

Mr. Ogden: R. Clarence Ogden.

The Clerk: And your address?

Mr. Ogden: 525 Standard Oil Building, San Francisco.

Mr. Mather: T. M. Mather for Respondent.

* * * *

The Court: Thank you.

You may call your first witness.

Mr. Ogden: Yes.

* * * *

Mr. Ogden: Will you take the stand, Mr. Standish?

Whereupon,

ALLAN M. STANDISH

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: May we have your name, please?

The Witness: Allan M. Standish.

(Testimony of Allan M. Standish.)

By Mr. Ogden:

Q. Mr. Standish, you are one of the petitioners in these proceedings? A. Yes. [73]

Q. Your father was Miles Standish?

A. Yes.

Q. And your father, Mr. Standish, died in 1932?

A. Yes.

Q. Do you remember the date?

A. June 22nd.

Q. June 22nd, 1932.

Showing you this deed of trust, I ask you if that deed of trust was executed by your father?

A. Yes.

Q. On what date?

A. On the 17th day of June, 1932.

Mr. Ogden: I will ask that that be received in evidence.

Mr. Mather: No objection.

The Court: Exhibit 1.

(The document referred to was marked and received in evidence as Petitioner's Exhibit No. 1.)

[Printer's Note]: Petitioner's Exhibit No. 1 set out in full at page 91.

Mr. Ogden: I am not entirely familiar with the proceedings here. Is that to be read in evidence now, or deemed read in evidence?

The Court: It need not be read.

Mr. Ogden: I might state at this time that the particular portions of that deed of trust we have

(Testimony of Allan M. Standish.)

introduced, we claim caused to be void as a conveyance are to be found [74] at the bottom of Page 2 of the deed of trust, and later on Page 4, where this trust is to be left until the youngest of an unborn grandchild becomes thirty years of age. That is, the trust is for the benefit of an unborn grandchild, along with grandchildren already in being, and it is continued until the youngest grandchild becomes thirty years of age. It is therefore created for a longer period of time than lives in being, and twenty-one years.

I suppose that our legal points of view will be taken care of in the brief.

By Mr. Ogden:

Q. Five days after executing that your father died; is that right? A. That's right.

Q. At the time of his death he left a last Will, did he? A. Right.

Q. I show you what purports to be a certified copy of the last Will of Miles Standish, and ask you if that is a certified copy of the original, as the original is filed in the office of the County Clerk of Santa Clara County, State of California:

A. It is.

Mr. Ogden: I ask that this be introduced in evidence. [75]

Mr. Mather: No objection.

The Court: Exhibit 2 in evidence.

(The document referred to was marked and

(Testimony of Allan M. Standish.)

received in evidence as Petitioner's Exhibit No. 2.)

[Printer's Note]: Petitioner's Exhibit No. 2 set out in full at page 105.

Mr. Ogden: I might state simply for the record, the purpose of that is to show that the entire residue of the estate is left to Allan Standish in trust for the benefit of Mr. Standish's or the testator's two grandchildren and the other for the benefit of A. M. Standish in his individual right. In other words, under the terms of the Will, the property—I simply refer to the residue clause of the Will at this time, to call attention of the Court of its effect.

By Mr. Ogden:

Q. Mr. Standish, you did apply for the probate of that Will in California, didn't you?

A. Yes.

Q. In the Superior Court of this State, for the County of Santa Clara? A. Correct.

Q. The estate was not finally distributed until the year 1942, is that right?

A. That's right.

Mr. Ogden: I am offering in evidence a certified copy of the decree of distribution, showing the estate was distributed July 24, 1942. I ask that certified copy be introduced in evidence. [76]

Mr. Mather: No objection.

The Court: Exhibit 3.

(Testimony of Allan M. Standish.)

(The document referred to was marked and received in evidence as Petitioner's Exhibit No. 3.)

[Printer's Note]: Petitioner's Exhibit No. 3 set out in full at page 109.

Mr. Ogden: I simply call attention of the Court at this time that that decree of distribution makes no pretense of distributing property outside of California. It only deals with property in California, but it makes no attempt to distribute real property, and distributes one-half of the residue as an interpretation of the Will to A. M. Standish individually and the other half of the residue to A. M. Standish as trustee for his two children in equal shares.

By Mr. Ogden:

Q. I ask you, were there ever any probate proceedings commenced in Oregon? A. No.

Q. Was there ever an executor or administrator appointed over the estate of Miles Standish in Oregon? A. No.

Q. Did Miles Standish have any debts in Oregon? A. No.

Q. You and your wife entered into a partnership agreement in December, 1935, did you not?

A. Yes.

Q. That partnership agreement has been filed with the [77] Treasury Department and has been acted on in connection with your prior yearly income tax return? A. Yes.

(Testimony of Allan M. Standish.)

Q. By that agreement you own half of everything you have between you, and she owns half of everything that you hold between you, whether it was inherited or community? A. Correct.

Q. As partners, and that has been accepted for other years by the Treasury Department?

A. Yes.

Q. Now, shortly after your father's death, the entire estate your father left, both in California, and also the estate he left in Oregon, was appraised for the purpose of fixing an estate tax due the United States Government?

A. That's correct.

Q. As a result of that appraisement, a Mr. Wohlenberg, acting on behalf of the United States Treasury, Engineer Revenue Agent, placed valuations upon the real property in Coos County and the real property in Douglas County?

A. Yes.

Mr. Ogden: I have here a copy—I asked for a certified copy from the Treasury Department—this is a copy of the valuation report in the estate. It is not the original copy, and counsel says that he is willing to stipulate that this copy can be put in for the purpose of valuation as [78] fixed for estate tax purposes.

The Court: For proving what the value was?

Mr. Ogden: The cost basis, yes, in 1932, the Coos and Douglas land.

Mr. Mather: I will stipulate with you that the value—there is a return for estate tax purposes

(Testimony of Allan M. Standish.)

of these properties—the Coos County properties were valued at \$10,261.25, and Douglas County at \$9,201.00.

Mr. Ogden: I wanted to go further, to show how those figures were arrived at.

Mr. Mather: I have no objection to the exhibit if it is offered.

The Court: Exhibit 4.

(The document referred to was marked and received in evidence as Petitioner's Exhibit No. 4.)

[Printer's Note]: Petitioner's Exhibit No. 4 set out in full at page 118.

The Court: Is it offered to be received as proof of all the facts therein stated?

Mr. Ogden: Yes. That is the purpose.

Mr. Mather: That is agreeable to me. There is no dispute with respect to the value.

The Court: Very well.

By Mr. Ogden:

Q. Mr. Standish, at the time the lands in Coos County were itemized at 520 acres suitable for agriculture, 400 acres of timber lands, and 1,000 acres of cut-over suitable for [79] reforestation—1920 acres—and simply a total value placed of \$16,000 for the land, and then 9,045,000 feet of Douglas fir at \$.50 a thousand was put in to fix the value of the standing timber at \$4,522.50, to give a total valuation of \$20,522.50, and your half interest, the amount stipulated to, that is \$10,261.25.

(Testimony of Allan M. Standish.)

In Douglas County it shows all timber land with fir, cedar, spruce and hemlock standing thereon, and the land is appraised at \$1.

I will ask you, do you know by what method, then—this refers to a conference with you and your representative—Do you know by what method the different lands in Coos County were valued? For instance, the 520 acres?

A. Some of it was considered suitable for agriculture, and some was considered timber land, and some was suitable for reforestation.

Q. What value did he place on that suitable for agriculture? A. I think it was \$28.

Q. A what? A. Per acre.

Q. In other words, the figure of \$28 per acre on the land suitable for agriculture was the figure you used in taking this total of \$16,000 for the 1920 acres? A. That's correct.

The Court: We will recess until 2:00 o'clock.

(Whereupon, at 12:30 P. M. a recess was taken until 2:00 P. M. of the same day.) [80]

Afternoon Session

2:00 P. M.

Whereupon,

ALLAN M. STANDISH

resumed his testimony as follows:

Direct Examination—Resumed

Mr. Ogden: May I have the last question and answer, please?

(Testimony of Allan M. Standish.)

(The last question and answer were read by the Reporter.)

By Mr. Ogden:

Q. In Coos County, 1920 acres total made up of this 520 acres of land suitable for agriculture, 400 acres of land labeled timber land, and 1000 acres of land suitable for reforestation were given the lump sum valuation of \$16,000. In making up that figure, the unit price of \$28 an acre for the 520 acres of land suitable for agriculture was the figure used by Mr. Wohlenberg?

A. That's correct.

Q. Now, between the year 1932, June of 1932, after your father died, and December 31, 1940, you with Mr. Hickey sold timber and lands from the properties in Coos and Douglas Counties aggregating how much, Mr. Standish?

A. A little over \$7,000, about \$7,200, I think, or \$7,600. [81]

Q. Referring to the figure reported in your income tax return, is your half \$3,000?

A. That was \$3,500 and something.

Q. \$3,521.95? A. That's right.

Q. That was half the total sales of land and timber? A. That's correct.

* * * *

Mr. Ogden: I will ask to introduce this letter from the sheriff of Douglas County to the same effect, Your Honor. Counsel has stipulated that this letter, together with the letter which is an-

(Testimony of Allan M. Standish.)

swered, can be deemed in evidence, and the matters therein recited taken as proof. Is that correct?

Mr. Mather: That is correct.

The Court: Exhibit 5.

(The document referred to was marked and received in evidence as Petitioner's Exhibit No. 5.)

[Printer's Note]: Petitioner's Exhibit No. 5 set out in full at page 122.

By Mr. Ogden:

Q. Prior to that sale, who had paid the taxes on the property from 1932 to 1936, inclusive?

A. We had.

Q. When you "we", who do you mean?

A. Mr. Hickey and myself.

Q. During the month of June, 1941, certain of the lands in Coos County were also sold, were they not?

A. That's correct. [82]

* * * *

Mr. Ogden: I will ask to introduce this letter from the sheriff of Coos County, setting forth the description.

The Court: Exhibit 6.

(The document referred to was marked and received in evidence as Petitioner's Exhibit No. 6)

[Printer's Note]: Petitioner's Exhibit No. 6 set out in full at page 124.

Mr. Mather: No objection.

(Testimony of Allan M. Standish.)

Mr. Ogden: That is in evidence to prove the sale of the land described in that letter.

By Mr. Ogden:

Q. The lands in Coos County that were not sold, what type of lands were they as to these three classifications, suitable for reforestation, suitable for agriculture or timber land?

A. They were lands suitable for reforestation.

Q. They were lands that had actually been placed in reforestation? A. Yes.

Q. Showing you this tax statement from Coos County, marked "Reforestation," I will ask you if that is the description of the lands that you then owned at the time of the tax sale, and were not sold at tax sale? A. Yes.

Mr. Ogden: I ask to introduce this reforestation statement from Coos County.

Mr. Mather: No objection.

The Court: Exhibit 7. [83]

(The document referred to was marked and received in evidence as Petitioner's Exhibit No. 7.)

[Printer's Note]: Petitioner's Exhibit No. 7 set out in full at page 126.

By Mr. Ogden:

Q. All other lands that were not sold were lands that you had previously sold for this \$3,500.00 that you spoke of? A. Correct.

* * * *

(Testimony of Allan M. Standish.)

Q. There were 520 acres of land in Coos County suitable for agriculture. I will ask you whether or not those 520 acres, and all of them were sold for delinquent taxes in June, 1941? A. Yes.

Q. I will ask you whether or not the lands on which the 9,000,000 feet of fir timber, set forth on Mr. Wohlenberg's report, were all sold in Coos County? A. Yes.

Q. That is, by the tax collector, for delinquent taxes? A. Correct.

Q. In 1941 you filed an income tax return as fiduciary for the Miles Standish Trust?

A. I did.

Q. I will ask you whether or not at that time you were acting upon advice that that trust was a valid trust? A. Yes.

Q. When you filed the return in 1941?

A. Yes.

Q. In that return you reported a loss of \$14,943.60, resulting from the sale of the lands in Coos County and [84] Douglas County, Oregon; is that correct? A. That's correct.

Q. And you computed that by deducting from the original cost basis of all the lands, first the lands in reforestation, not lost for taxes, and also the lands and timber amounting to \$996.70, and the sales previously reported of \$3,521.95?

A. That's right.

* * * *

(Testimony of Allan M. Standish.)

Cross-Examination

By Mr. Mather:

Q. Mr. Standish, I hand you Petitioner's Exhibit 1, and ask you to state whether or not the property that was sold for taxes in 1941 is included in that document? A. Yes.

Q. After the execution of Petitioner's Exhibit 1, was income received from that property?

A. During the period of years some of the property was sold. I don't believe it was income; it was cutting of the timber, or some of the land was sold and reported each year.

Q. During '33, some \$3,700?

A. Some \$3,500 during a period of about '32 to '40, something like that, as reported.

Q. That would be a half interest in the property, I take it? [85] A. Yes.

Q. Who are named as beneficiaries in Petitioner's Exhibit 1? A. Myself and my wife.

* * * *

Q. Were any distributions made to you from that trust from the date of its creation up to 1941?

A. Well, at that period we thought that this was a valid trust, and it was to me, yes.

Q. To the other beneficiaries named therein, distributions were made, were there not?

A. Yes.

Q. In accordance with the terms of the trust, and you were one of the trustees, were you not?

A. Yes.

(Testimony of Allan M. Standish.)

Q. So that distributions were made in accordance with the trust during all of the years up to and including 1941? A. Yes.

Q. Has there been any litigation with respect to that trust instrument? A. No.

Q. There has been no litigation to determine whether or not it is a valid trust or whether it is not, has there been? A. No.

* * *

[Endorsed]: T.C.U.S. Filed Oct. 14, 1944. [86]

PETITIONER'S EXHIBIT NO. 1

DEED OF TRUST.

This Indenture, made and entered into this 17th day of June, 1932, by and between Miles Standish, the first party, hereinafter called Grantor, and Miles Standish, Allan M. Standish, his son, and Beatrice M. Standish, wife of Allan M. Standish, hereinafter called Trustees, as Trustees for the Beneficiaries hereinafter named.

Witnesseth:

That said Grantor, for and in consideration of the love and affection which he bears to his said son, to his said daughter-in-law, and to his two grandchildren, Patricia Standish and Beatrice Standish, children of said Allan M. Standish and Beatrice M. Standish, hereinafter called Beneficiaries, and for the better maintenance, support, protection and livelihood of said Beneficiaries, and for the consideration and upon the trusts hereinafter

Petitioner's Exhibit No. 1—(Continued)
set forth, does hereby grant unto the said Trustees all of that certain real property particularly described in Schedule "A" hereto attached, which Schedule is hereby referred to and by such reference is made a part hereof as though particularly set forth in this paragraph.

To Have and to Hold all of the said property, in trust, however, for the uses and purposes as follows:

First:—The Grantor reserves for his sole use the income and/or proceeds from all of the said property during his lifetime.

Second:—The Grantor reserves the right to add to the property herein mentioned, said additional property to be held for the same uses and purposes as all the rest of the property herein described.

Third:—Notwithstanding anything herein contained it is especially provided and agreed that the Grantor shall have and he hereby especially reserves the right at any time during his life, to revoke and cancel this trust, together with all rights of the Trustees or the Beneficiaries or the successors of the Beneficiaries thereunder, by delivering to the Trustees a notice in writing, duly acknowledged; and immediately upon the delivery of such notice this trust shall be revoked accordingly, and if revoked by such notice the trust fund and the whole thereof and any income therefrom then in the hands of the Trustees shall be delivered on demand to the Grantor, except such portion thereof as may be due to the Trustees for services rendered to said date.

Petitioner's Exhibit No. 1—(Continued)

Fourth:—The property herein referred to shall be held by the Trustees and during the lifetime of the Grantor, the net income and proceeds therefrom shall be paid to the Grantor in quarterly installments as nearly as may be practicable; and upon the death of the Grantor said income and proceeds shall be paid as follows:

(a) Fifty-one per cent (51%) of said net income shall be paid to Allan M. Standish;

(b) Seventeen per cent (17%) of said net income shall be paid to Beatrice M. Standish, wife of Allan M. Standish;

(c) Sixteen per cent (16%) of said net income shall be paid to Patricia Standish;

(d) Sixteen per cent (16%) of said income shall be paid to Beatrice Standish.

This division of the net proceeds and income from the said property shall continue until the youngest grandchild shall have attained the age of thirty (30) years, when the Trustees shall convey to the Beneficiaries then living, all of the property then remaining in this trust, in such proportion as their respective interests are indicated by the percentages upon which the income has been paid to them, and the trust shall cease.

Fifth:—As incidental to the trust herein created the Trustees shall have full power and authority, in their discretion, to manage, control, sell, transfer, mortgage, convey, lease, exchange, and otherwise

Petitioner's Exhibit No. 1—(Continued)

deal with, and dispose of, any or all of the trust estate, and to execute any instruments necessary for the exercise of such powers, and should corporate stock come into said estate to make any and all transfers thereof into their name as in any case may be necessary or proper for and in the administration of the trust; to collect rents or other incomes; to collect at maturity any and all securities, to invest and re-invest the proceeds of the sale of any property, real or personal, and the property in which the proceeds of sales or exchanges may be invested, or property received in exchange, may be again sold or re-exchanged as often as the Trustees shall see fit and the proceeds re-invested; and the Trustees shall also have the power to pay all taxes, assessments and charges levied upon or against the property held in trust, employ clerical or other assistance, and also legal counsel whenever in their judgment it is necessary so to do.

Sixth: The enumeration herein of the powers of the Trustees shall not be considered as limitations, for the Trustees shall have the power, at the expense of the trust, to do all other things which may legally be done by a trustee for the proper care, control, preservation, management or disposition of the property held subject to the trust hereby created.

Seventh:—Should Allan M. Standish predecease the Grantor herein, the latter reserves the right to appoint a successor to said Allan M. Standish without the consent of his co-surviving Trustee, but after

Petitioner's Exhibit No. 1—(Continued)

the death of the Grantor the surviving Trustees are authorized to appoint a trustworthy successor to the Grantor as Trustee, and thereafter, in the event of the death of any of the surviving Trustees, the remaining Trustees shall appoint a trustworthy successor to carry on the provisions of this trust.

Eighth:—In the event that I have any additional grandchild or grandchildren living at the time of my death, the shares of Patricia and Beatrice Standish shall be proportionately reduced so that such additional grandchild or grandchildren shall share equally with them.

Ninth:—In the event that any grandchild shall die prior to the time that the respective beneficial interest due said grandchild shall become payable in whole or part as herein provided, then the invested beneficial interest due said grandchild shall revert as follows:

1. If said deceased grandchild shall leave lawful heir of his or her body then such legal heir or heirs shall become the beneficiary in the place and stead of his or her parent by right of representation.

2. In the event any deceased grandchild leaves no legal heirs, then the beneficial interest to which said grandchild would otherwise be entitled shall revert to the equal benefit of the surviving grandchildren, the legal issue of any deceased grandchild to take by representation.

3. In the event that all of said grandchildren

Petitioner's Exhibit No. 1—(Continued)

die without legal issue prior to the vesting of all of said trust estate, so much as remains shall be paid or delivered to any heirs of the first party under the law of succession as the same exists at the date of this instrument.

Tenth:—The sole, separate and acknowledged receipt of the Grantor, or the other Beneficiaries herein, for his or her respective share or portion of said income, as the same is paid, shall be a complete acquittance to the Trustees or their successors, and deposit in a reliable bank to the credit of the Grantor, or of a Beneficiary, shall be equivalent to delivery by Trustees.

Eleventh:—Before paying any income during any year, to any beneficiary hereinabove named, the Trustees shall retain sufficient funds to pay all taxes and expenses of executing this trust during the current year.

Twelfth:—No bond shall be required of any Trustee hereunder.

In Witness Whereof, the Grantor has hereunto set his hand the day and year first hereinbefore written.

MILES STANDISH

We, the undersigned, named as Trustees in the foregoing Trust Deed, hereby accept the office of Trustee of the said trust.

MILES STANDISH

ALLAN M. STANDISH

BEATRICE M. STANDISH

Petitioner's Exhibit No. 1—(Continued)

SCHEDULE "A."

An undivided one-half interest in the following lands situated in Mendocino County, California, particularly described as follows:

In Township 12 North of Range 12 West,
Mount Diablo Base and Meridian.

| | Section |
|--|---------|
| SW $\frac{1}{4}$ of NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ | 17 |
| NE $\frac{1}{4}$ of | 18 |
| In Township 12 North of Range 13 West. | |
| SW $\frac{1}{4}$ of NE $\frac{1}{4}$, NW $\frac{1}{4}$ of SE $\frac{1}{4}$, S $\frac{1}{2}$ of SE $\frac{1}{4}$, except 5 acres off E. side of SE $\frac{1}{4}$ of SE $\frac{1}{4}$, S $\frac{1}{2}$ of NW $\frac{1}{4}$, SW $\frac{1}{4}$ —all in | 14 |
| N $\frac{1}{2}$ of NW $\frac{1}{4}$ —timber only | 14 |
| E $\frac{1}{2}$ of NE $\frac{1}{4}$, SW $\frac{1}{4}$ of NE $\frac{1}{4}$, both in | 15 |
| NE $\frac{1}{4}$ of NW $\frac{1}{4}$, N $\frac{1}{2}$ of NE $\frac{1}{4}$ | |
| N $\frac{1}{2}$ of SE $\frac{1}{4}$, SW $\frac{1}{4}$ of SE $\frac{1}{4}$, all in | 23 |
| NW $\frac{1}{4}$ of SW $\frac{1}{4}$ | 24 |
| In Township 12 North of Range 15 West. | |
| NE $\frac{1}{4}$ of SW $\frac{1}{4}$ | 11 |
| In Township 13 North of Range 14 West. | |
| Lots 1, 2 and 4, Undivided $\frac{1}{2}$ of Lot 3 Also the S $\frac{1}{2}$ of the NW $\frac{1}{4}$ —all of..... | 4 |
| In Township 13 North of Range 15 West. | |
| NW $\frac{1}{4}$ of SE $\frac{1}{4}$, N $\frac{1}{2}$ of SW $\frac{1}{4}$ SW $\frac{1}{4}$ of SW $\frac{1}{4}$ —all in | 13 |
| In Township 14 North of Range 14 West. | |
| Lots 1, 2 and 4 W $\frac{1}{2}$ of SW $\frac{1}{4}$ —all of | 2 |
| E $\frac{1}{2}$ of E $\frac{1}{2}$ SW $\frac{1}{4}$ of SE $\frac{1}{4}$ —all of..... | 3 |
| W $\frac{1}{2}$ or NW $\frac{1}{4}$ | 11 |
| SW $\frac{1}{4}$ of SW $\frac{1}{4}$, excepting right of way for a wagon road heretofore granted to B. C. Van Zandt | 20 |
| N $\frac{1}{2}$ of N $\frac{1}{4}$, except 5 acres in the NW corner of the NW corner of the NW $\frac{1}{4}$, and excepting right of way for a wagon road heretofore granted to B. C. Van Zandt, SW $\frac{1}{4}$ of SW $\frac{1}{4}$, SE $\frac{1}{4}$ of NW $\frac{1}{4}$ | 29 |
| Undivided $\frac{1}{2}$, E $\frac{1}{2}$ of the SW $\frac{1}{4}$ | 33 |

Petitioner's Exhibit No. 1—(Continued)

In Township 15 North of Range 14 West.

| | Section |
|--|---------|
| NE $\frac{1}{4}$ of SE $\frac{1}{4}$ | 4 |
| Lot 4 and SW $\frac{1}{4}$ of NW $\frac{1}{4}$, and NW $\frac{1}{4}$ of SW $\frac{1}{4}$ | 5 |
| SE $\frac{1}{4}$ of SE $\frac{1}{4}$, SE $\frac{1}{4}$ of SW $\frac{1}{4}$ | 6 |
| NE $\frac{1}{4}$, N $\frac{1}{2}$ of SE $\frac{1}{4}$, NE $\frac{1}{4}$ of NW $\frac{1}{4}$ | 7 |
| W $\frac{1}{2}$ of W $\frac{1}{2}$, SE $\frac{1}{4}$ of NW $\frac{1}{4}$ | |
| SW $\frac{1}{4}$ of NE $\frac{1}{4}$, W $\frac{1}{2}$ of SE $\frac{1}{4}$, all in | 8 |
| NW $\frac{1}{4}$ of SE $\frac{1}{4}$, SE $\frac{1}{4}$ of SE $\frac{1}{4}$, NE $\frac{1}{4}$ of SW $\frac{1}{4}$ | 9 |
| SE $\frac{1}{4}$ of SW $\frac{1}{4}$ | 10 |

In Township 15 North of Range 14 West.

| | |
|---|----|
| SW $\frac{1}{4}$ of NW $\frac{1}{4}$ | 11 |
| SE $\frac{1}{4}$ | 17 |
| SE $\frac{1}{4}$ of NW $\frac{1}{4}$ | 19 |
| S $\frac{1}{2}$ of NE $\frac{1}{4}$, | |
| N $\frac{1}{2}$ of SE $\frac{1}{4}$, SW $\frac{1}{4}$ of NW $\frac{1}{4}$, all in..... | 24 |
| NW $\frac{1}{4}$ of SE $\frac{1}{4}$, N $\frac{1}{2}$ of SW $\frac{1}{4}$, SW $\frac{1}{4}$ of SW $\frac{1}{4}$ | 26 |
| N $\frac{1}{2}$ of SE $\frac{1}{4}$, SE $\frac{1}{4}$ of SE $\frac{1}{4}$ | |
| S $\frac{1}{2}$ of NW $\frac{1}{4}$, SW $\frac{1}{4}$ —all in | 27 |
| E $\frac{1}{2}$ of E $\frac{1}{2}$ | 28 |
| NW $\frac{1}{4}$ of SW $\frac{1}{4}$ | 29 |
| SE $\frac{1}{4}$ of NE $\frac{1}{4}$ —Lots 3 and 4..... | 30 |
| E $\frac{1}{2}$ of NE $\frac{1}{4}$, SE $\frac{1}{4}$ of NW $\frac{1}{4}$, E $\frac{1}{2}$ of SW $\frac{1}{4}$, | |
| SW $\frac{1}{4}$ of SW $\frac{1}{4}$ —all in | 33 |
| S $\frac{1}{2}$ of NE $\frac{1}{4}$, SE $\frac{1}{4}$ of SE $\frac{1}{4}$, NW $\frac{1}{4}$, | |
| N $\frac{1}{2}$ of S $\frac{1}{2}$ —all in..... | 34 |
| SW $\frac{1}{4}$ of SE $\frac{1}{4}$, S $\frac{1}{2}$ of SW $\frac{1}{4}$ | |
| NW $\frac{1}{4}$ of SW $\frac{1}{4}$ —all in | 35 |

In Township 15 North of Range 15 West.

| | |
|---|----|
| SW $\frac{1}{4}$ of SE $\frac{1}{4}$ | 3 |
| SE $\frac{1}{4}$ of NE $\frac{1}{4}$ | 9 |
| NE $\frac{1}{4}$ of NW $\frac{1}{4}$ | 11 |
| SE $\frac{1}{4}$ of SW $\frac{1}{4}$ | 13 |
| W $\frac{1}{2}$ of SW $\frac{1}{4}$ | 14 |
| E $\frac{1}{2}$ of SE $\frac{1}{4}$ | 15 |
| N $\frac{1}{2}$ of NE $\frac{1}{4}$, SW $\frac{1}{4}$ of NE $\frac{1}{4}$, NE $\frac{1}{4}$ of NW $\frac{1}{4}$ | 24 |

In Township 14 North of Range 15 West.

| | |
|--|----|
| Lots 11, 12 and 20 | 21 |
| W $\frac{1}{2}$ of SW $\frac{1}{4}$ | 22 |
| NE $\frac{1}{4}$ of NE $\frac{1}{4}$, SE $\frac{1}{4}$ of NW $\frac{1}{4}$, NE $\frac{1}{4}$ of SW $\frac{1}{4}$ | |
| SE $\frac{1}{4}$ of SW $\frac{1}{4}$, and SW $\frac{1}{4}$ of SE $\frac{1}{4}$, all in..... | 25 |

Petitioner's Exhibit No. 1—(Continued)

In Township 16 North of Range 14 West.

| | Section |
|--|---------|
| NE $\frac{1}{4}$ of SE $\frac{1}{4}$ | 5 |
| SE $\frac{1}{4}$ of SE $\frac{1}{4}$ | 8 |
| S $\frac{1}{2}$ of SE $\frac{1}{4}$ | 9 |
| Lot 4 and N $\frac{1}{2}$ of Lot 5..... | 18 |
| Lot 28 | 30 |
| Lots 24, 25, 26, 32 and 33..... | 31 |

In Township 16 North of Range 15 West.

| | |
|--|----|
| SW $\frac{1}{4}$ of SW $\frac{1}{4}$ | 13 |
| E $\frac{1}{2}$ of SE $\frac{1}{4}$, SW $\frac{1}{4}$ of SE $\frac{1}{4}$, S $\frac{1}{2}$ of SW $\frac{1}{4}$ | 17 |
| NE $\frac{1}{4}$ of NE $\frac{1}{4}$, SE $\frac{1}{4}$ of NE $\frac{1}{4}$ or E $\frac{1}{2}$ of NE $\frac{1}{4}$ | 20 |
| E $\frac{1}{2}$ of NE $\frac{1}{4}$ | 23 |
| N $\frac{1}{2}$ of NW $\frac{1}{4}$, SW $\frac{1}{4}$ of NW $\frac{1}{4}$ | 24 |
| Lot 8 or SE $\frac{1}{4}$ of SE $\frac{1}{4}$ | 25 |
| Lot 1 | 28 |
| Lot 1 | 33 |

In Township 17 North of Range 15 West.

| | |
|---|----|
| S $\frac{1}{2}$ of SW $\frac{1}{4}$ | 18 |
| N $\frac{1}{2}$ of NW $\frac{1}{4}$ | 19 |

In Township 18 North of Range 15 West.

| | |
|---|----|
| S $\frac{1}{2}$ of SW $\frac{1}{4}$ | 23 |
| NE $\frac{1}{4}$ and NE $\frac{1}{4}$ of NW $\frac{1}{4}$ | 34 |

In Township 19 North of Range 15 West.

| | |
|---|----|
| E $\frac{1}{2}$ of E $\frac{1}{2}$ | 23 |
| N $\frac{1}{2}$ of NE $\frac{1}{4}$, SW $\frac{1}{4}$ of NE $\frac{1}{4}$, NW $\frac{1}{4}$ of SE $\frac{1}{4}$ | 25 |

In Township 20 North of Range 15 West.

| | |
|---|----|
| SE $\frac{1}{4}$ of SW $\frac{1}{4}$, NW $\frac{1}{4}$ of SE $\frac{1}{4}$ | 29 |
|---|----|

In Township 20 North of Range 16 West.

| | |
|---|----|
| S $\frac{1}{2}$ of SW $\frac{1}{4}$, NW $\frac{1}{4}$ of SW $\frac{1}{4}$, SW $\frac{1}{4}$ of SE $\frac{1}{4}$ | 12 |
| SE $\frac{1}{4}$ and N $\frac{1}{2}$ of NW $\frac{1}{4}$ | 25 |
| N $\frac{1}{2}$ of NE $\frac{1}{4}$ | 26 |

Petitioner's Exhibit No. 1—(Continued)

In township 24 North of Range 17 West.

| | Section |
|--|---------|
| NW $\frac{1}{4}$ of NE $\frac{1}{4}$, NE $\frac{1}{4}$ of NW $\frac{1}{4}$ | 8 |
| S $\frac{1}{2}$ of SE $\frac{1}{4}$, NW $\frac{1}{4}$ of SE $\frac{1}{4}$ | 7 |
| Lots and 9, all that part of the S $\frac{1}{2}$ of Lot 10, and the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$, lying west of center of the South Fork of the Eel River. | |
| Lots 24, 25, and W $\frac{1}{2}$ of Lot 26 | 6 |
| Lots 10 and 11 | 31 |

In Township 23 North of Range 17 West.

| | |
|---|----|
| SW $\frac{1}{4}$ of SW $\frac{1}{4}$, less 5 acres, N $\frac{1}{2}$ of S $\frac{1}{2}$ | 3 |
| Lots 4, 9, 10, 11, 12, 13, 14, 15, 16 and S $\frac{1}{2}$ —all of | 4 |
| Lots 9 and 16, E $\frac{1}{2}$ of SE $\frac{1}{4}$, SW $\frac{1}{4}$ | 5 |
| NE $\frac{1}{4}$ | 8 |
| NE $\frac{1}{4}$ of NE $\frac{1}{4}$ | 9 |
| NW $\frac{1}{4}$ of NW $\frac{1}{4}$ | 10 |

In Township 24 North of Range 18 West.

| | |
|-------------|---|
| Lot 2 | 2 |
|-------------|---|

An undivided one-third interest in the following lands
situated in Mendocino County, California, particularly
described as follows:

In Township 15 North of Range 16 West.

| | Section |
|---|---------|
| SW $\frac{1}{4}$ of NE $\frac{1}{4}$ | |
| N $\frac{1}{2}$ of SE $\frac{1}{4}$, and SE $\frac{1}{4}$ of SE $\frac{1}{4}$, all in | 10 |
| SW $\frac{1}{4}$ | 11 |

Petitioner's Exhibit No. 1—(Continued)

In Township 16 North of Range 14 West.

| | Section |
|--|---------|
| Lots 19 and 20 | 7 |
| E $\frac{1}{2}$ of SE $\frac{1}{4}$, SW $\frac{1}{4}$ of SE $\frac{1}{4}$ | 7 |
| W $\frac{1}{2}$ of SW $\frac{1}{4}$ | 8 |
| NW $\frac{1}{4}$ of NW $\frac{1}{4}$ | 17 |
| N $\frac{1}{2}$ of Lot 11 | 18 |
| NE $\frac{1}{4}$, NE $\frac{1}{4}$ of SE $\frac{1}{4}$ | 18 |
| E $\frac{1}{2}$ of NE $\frac{1}{4}$ | 19 |
| NW $\frac{1}{4}$ | 20 |
| S $\frac{1}{2}$ of SW $\frac{1}{4}$ | 27 |
| E $\frac{1}{2}$ of SW $\frac{1}{4}$, S $\frac{1}{2}$ of SE $\frac{1}{4}$, NW $\frac{1}{4}$ of SE $\frac{1}{4}$ | 28 |
| Lot 1 | 31 |
| Lots 1, 3, 4, 5, and 7, | 32 |
| N $\frac{1}{2}$ of N $\frac{1}{2}$ | 33 |
| E $\frac{1}{2}$ of SE $\frac{1}{4}$ | 33 |
| NW $\frac{1}{4}$, W $\frac{1}{2}$ of NE $\frac{1}{4}$, SW $\frac{1}{4}$ of SW $\frac{1}{4}$ | 34 |
| N $\frac{1}{2}$ of SW $\frac{1}{4}$, SE $\frac{1}{4}$ | 34 |

An undivided one-third interest in the following lands situated in Kings County, California, particularly described as follows:

In Township 23 South of Range 16 East.

| | Section |
|--|---------|
| NE $\frac{1}{4}$, N $\frac{1}{2}$ of NW $\frac{1}{4}$, SE $\frac{1}{4}$ of NW $\frac{1}{4}$, N $\frac{1}{2}$ of SE $\frac{1}{4}$, SE $\frac{1}{4}$ of SE $\frac{1}{4}$, SW $\frac{1}{4}$ of SW $\frac{1}{4}$, all in | 16 |

All of the following lands situated in Lake County, California, particularly described as follows:

In Township 14 North of Range 6 West, M.D.M.

| | Section |
|---|---------|
| S $\frac{1}{2}$ of SW $\frac{1}{4}$ | 4 |
| N $\frac{1}{2}$ of NW $\frac{1}{4}$ | 9 |

Petitioner's Exhibit No. 1—(Continued)

An undivided one-half interest in the following lands situated in Humboldt County, California, particularly described as follows:

| In Township 1 South of Range 1 East, H.B.M. | | Section |
|--|--|---------|
| NE $\frac{1}{4}$ of NW $\frac{1}{4}$, W $\frac{1}{2}$ of NE $\frac{1}{4}$, S $\frac{1}{2}$ of SW $\frac{1}{4}$ | | |
| SW $\frac{1}{4}$ of SE $\frac{1}{4}$, all in | | 36 |
| In Township 1 South of Range 2 East, H.B.M. | | |
| Lots 1, 2, 3, and NE $\frac{1}{4}$ of SW $\frac{1}{4}$ | | 31 |
| In Township 2 South of Range 1 East, H.B.M. | | |
| SE $\frac{1}{4}$ of NW $\frac{1}{4}$ | | 13 |
| SE $\frac{1}{4}$ of NE $\frac{1}{4}$, NE $\frac{1}{4}$ of SE $\frac{1}{4}$ | | 14 |
| In Township 2 South of Range 2 East, H.B.M. | | |
| SW $\frac{1}{4}$ | | 6 |
| W $\frac{1}{2}$ of NE $\frac{1}{4}$, E $\frac{1}{2}$ of NW $\frac{1}{4}$ | | 15 |
| S $\frac{1}{2}$ of SE $\frac{1}{4}$ | | 18 |
| NE $\frac{1}{4}$ of NE $\frac{1}{4}$, Lots 3 and 4 | | 19 |
| NW $\frac{1}{4}$ of NW $\frac{1}{4}$ | | 20 |
| E $\frac{1}{2}$ of SE $\frac{1}{4}$, SW $\frac{1}{4}$ of SE $\frac{1}{4}$ | | 21 |
| N $\frac{1}{2}$ of SE $\frac{1}{4}$, SW $\frac{1}{4}$ of SE $\frac{1}{4}$ | | 22 |
| NE $\frac{1}{4}$ | | 26 |
| SW $\frac{1}{4}$ of NE $\frac{1}{4}$, S $\frac{1}{2}$ of NW $\frac{1}{4}$, S $\frac{1}{2}$ | | 29 |
| SE $\frac{1}{4}$ of NW $\frac{1}{4}$, S $\frac{1}{2}$ of NE $\frac{1}{4}$, N $\frac{1}{2}$ of SW $\frac{1}{4}$ | | 30 |
| In Township 2 South of Range 3 East, H.B.M. | | |
| All that part of SE $\frac{1}{4}$ of SE $\frac{1}{4}$ lying east of South Fork of Eel River..... | | 20 |
| All of S $\frac{1}{2}$ of SW $\frac{1}{4}$ lying west of South Fork of Eel River | | 21 |
| E $\frac{1}{2}$ of NE $\frac{1}{4}$, N $\frac{1}{2}$ of SE $\frac{1}{4}$ | | 29 |
| In Township 3 South of Range 3 East, H.B.M. | | |
| W $\frac{1}{2}$ of W $\frac{1}{2}$ of SE $\frac{1}{4}$ | | 12 |
| In Township 12 North of Range 3 East, H.B.M. | | |
| SW $\frac{1}{4}$ of SW $\frac{1}{4}$ | | 5 |
| SE $\frac{1}{4}$ of SE $\frac{1}{4}$ | | 6 |

Together with any other real property or interest in real property owned by me in said State of California, excepting my home, 375 Coleridge Avenue, Palo Alto, California.

Petitioner's Exhibit No. 1—(Continued)

An undivided one-half interest in the following lands situated in Coos County, Oregon, particularly described as follows:

In Township 25 South of Range 11 West,

Willamette B. & M.

| | Section |
|---|---------|
| Lot 1 or NE $\frac{1}{4}$ of SE $\frac{1}{4}$ | 22 |
| NW $\frac{1}{4}$ of NW $\frac{1}{4}$ | 29 |

In Township 25 South of Range 11 West,

Willamette B. & M.

| | |
|--|----|
| NW $\frac{1}{4}$ of NW $\frac{1}{4}$ | 28 |
|--|----|

In Township 27 South of Range 13 West,

Willamette B. & M.

| | |
|--|----|
| All of | 22 |
| All of | 23 |
| SW $\frac{1}{4}$ of | 14 |
| S $\frac{1}{2}$ of NE $\frac{1}{4}$ | 15 |
| E $\frac{1}{2}$ of SE $\frac{1}{4}$, and SW $\frac{1}{4}$ of SE $\frac{1}{4}$ | 15 |

In Township 31 South of Range 11 West,

Willamette B. & M.

| | |
|---|----|
| SE $\frac{1}{4}$ of NW $\frac{1}{4}$, and NE $\frac{1}{4}$ of SW $\frac{1}{4}$ | 28 |
|---|----|

An undivided one-half interest in the following lands situated in Douglas County, Oregon, particularly described as follows:

In Township 20 South of Range 11 West,

Willamette B. & M.

| | Section |
|--|---------|
| N $\frac{1}{2}$ of NE $\frac{1}{4}$, SE $\frac{1}{4}$ of NE $\frac{1}{4}$, E $\frac{1}{2}$ of SE $\frac{1}{4}$ | 23 |
| SW $\frac{1}{4}$ of NW $\frac{1}{4}$, NW $\frac{1}{4}$ of SW $\frac{1}{4}$, NE $\frac{1}{4}$ of NE $\frac{1}{4}$ | 26 |
| NE $\frac{1}{4}$ of SE $\frac{1}{4}$, NW $\frac{1}{4}$ of SE $\frac{1}{4}$, SW $\frac{1}{4}$ of SE $\frac{1}{4}$, NE $\frac{1}{4}$ of SW $\frac{1}{4}$, SE $\frac{1}{4}$ of SW $\frac{1}{4}$, all in | 27 |

Petitioner's Exhibit No. 1—(Continued)

In Township 21 South of Range 11 West,

Willamette B. & M.

| | Section |
|-------------------------|---------|
| Lots 9, 10 and 11 | 32 |

In Township 21 South of Range 12 West.

Willamette B. & M.

| | |
|---|----|
| NE $\frac{1}{4}$ of NE $\frac{1}{4}$, SE $\frac{1}{4}$ of NE $\frac{1}{4}$, NE $\frac{1}{4}$ of SE $\frac{1}{4}$, SE $\frac{1}{4}$ of SE $\frac{1}{4}$, SW $\frac{1}{4}$ of SE $\frac{1}{4}$, SE $\frac{1}{4}$ of SW $\frac{1}{4}$, all in | 25 |
|---|----|

In Township 22 South of Range 11 West.

Willamette B. & M.

| | |
|------------------------|---|
| Lots 3, 4, and 5 | 8 |
|------------------------|---|

Also right to build, operate and maintain a logging boom to high water mark on the north bank of the Umpqua River, in front and abutting on the descriptions following, to-wit:

Lots 3 - 4 - Sec. 34; Lot 1 - Sec. 33, Township 21 S. 11 West, Willamette B. & M. Also right-of-way for logging, with right to build and maintain a logging boom to high water mark on north bank of Umpqua River in front and abutting Lots 1 and 2, Sec. 31; Lots 2-3-4, Sec. 32, 21 S. 11 W., Douglas County, Oregon.

Together with any other real property or interest in real property owned by me in said State of Oregon.

Recorded: July 1, 1932, Liber 74 of Official Records p. 221 Mendocino Co. California

Recorded: July 15 1932, Book 207 of Deeds p. 295 Humboldt Co., California.

Recorded: Aug 10 1932, Vol 94 of Deeds p. 310 Douglas Co. Oregon

Recorded: Aug 19 1932 Book 117 of Deeds p 395 Coos Co. Oregon

[Endorsed]: T.C.U.S. Filed Sept 14, 1944 [100]

PETITIONER'S EXHIBIT NO. 2

LAST WILL OF MILES STANDISH.

I, Miles Standish, widower, residing at No. 375 Coleridge Street, in the City of Palo Alto, County of Santa Clara, State of California, hereby make, publish and declare this my last Will and Testament, that is to say:

First:—All indebtedness appearing on my books against Allan M. Standish and the ranch owned by him in the County of Santa Clara, State of California, is hereby cancelled, and any such indebtedness shall be no part of my estate.

Second:—I give and bequeath to my sister, Martha A. Standish, the sum of One Hundred Dollars (\$100.00) per month out of my estate, during her lifetime, and in the event that my said estate be distributed prior to her death, I direct that a sufficient amount of securities be set apart from my estate to secure the payment of said legacy of One Hundred Dollars (\$100.00) per month, and that said legacy be a charge thereon, on her death said securities to revert to my son Allan M. Standish and become a part of the trust hereinafter created.

Third:—I give and bequeath to my son and sole heir, Allan M. Standish, the sum of Fifty Thousand Dollars (\$50,000.00) in securities, to be selected out of my estate at the market value thereof.

Fourth:—I give, devise and bequeath to my said son, Allan M. Standish, all of the residue of my property and estate of every kind and nature, and

wherever situate, of which I may die seized or possessed or in which I may have an interest, in trust, nevertheless, for the following uses and purposes, that is to say: To have, hold, manage and control, bargain, sell, transfer, exchange, invest and re-invest the proceeds thereof; to collect the income [101] therefrom, and out of said income pay over one-half thereof to the Trustees of a certain Trust created by agreement in writing, dated the 7th day of January, 1930, made and executed by Miles Standish, the party of the first part therein named, and Miles Standish and Allan M. Standish, his son, the parties of the second part therein named, their successors and survivors, which said trust agreement is hereby referred to and made a part hereof, in trust, nevertheless, for the use and benefit of my grandchildren, Patricia Standish and Beatrice Standish, the children of my said son, Allan M. Standish, and for the use and benefit of any other child or children hereafter born to my said son Allan M. Standish, in equal shares, as provided by the terms of said last named Trust, and to pay over the remaining one-half of said income to my said son Allan M. Standish, in his own right and for his own use and benefit; and as fast as said property is sold and the proceeds thereof collected, pay over and distribute the same in the manner and in the same proportions as said income is to be paid over and distributed; provided, always, said Allan M. Standish is authorized and empowered to retain undivided such proceeds as he deems necessary to properly care for and pay taxes and expenses on the balance of the

unsold property; provided, in any event, this Trust shall terminate and division of the property shall be made as aforesaid, not later than fifteen (15) years from the date of my death.

Fifth—In the event of the death of my said son, Allan M. Standish, before the termination of said trust, I hereby appoint his wife, Beatrice M. Standish and Miles W. McIntosh, Trustees of said trust in his place and stead, and in the event of the death of said Beatrice M. Standish prior to the termination of said trust, I hereby appoint Lucius Lombard, as Trustee [102] in her place and in the event of the death of said Miles W. McIntosh prior to the termination of said trust, I hereby appoint Clarence Ogden, Trustee, in his place and stead.

I hereby direct that no bond shall be required of my said Trustees, or either of them, as such Trustees.

Sixth:—It is my intention to hereby confer upon said Trustees and their successors, full and complete power and authority to manage and control said trust property and dispose of the same and pay over the proceeds thereof in accordance with the above trust, in their discretion, and without application to any court for permission so to do, and without the order of any court, and I further direct that no purchaser of any property belonging to my estate from said Trustee or Trustees shall be under any obligation to see that proper application is made of the proceeds of such sale or sales by said Trustee or Trustees.

Seventh:—I hereby nominate and appoint my said son, Allan M. Standish, Executor of this my last Will and Testament, and in case of his death, resignation or failure to act, I hereby nominate and appoints his wife, Beatrice M. Standish, executrix of this my last Will and Testament, and direct that no bond or other security be required of them, or either of them, as such Executor and Executrix.

Eighth:—I hereby declare that my wife is dead and I have never remarried. If any person claims to be my wife and contests this Will, then I give and bequeath to such person the sum of One Dollar (\$1.00).

Ninth:—I hereby revoke all former Wills by me made.

In Witness Whereof, I have hereunto set my hand and seal this 7th day of January, 1930.

[Seal]

MILES STANDISH

Witnesses:

H. B. HICKEY

ALICE SHEA

The foregoing instrument, consisting of three (3) pages besides this, was, at the date thereof, by said Miles Standish, signed, in our presence, and in the presence of each of us, and at the time of his subscribing said instrument, he declared that it was his Will, and at his request and in his presence and in the presence of each other, we have subscribed our names thereto as witnesses.

H. B. Hickey residing at No. 260 Lee Street, Oakland in the County of Alameda, State of California.

Alice Shea residing at No. 3564 Seventeenth Street, in the City and County of San Francisco, State of California.

[Endorsed]: Filed Jun 29, 1932. Henry A. Pfister, Clerk. By W. Denker, Deputy.

The foregoing Instrument is a correct copy of the original on file in this office.

Attest May 4 1943

FRANK W. HOGAN

County Clerk and ex-officio Clerk of the Superior Court of the State of California and for the County of Santa Clara.

By ROSALIE EAGER

Deputy

[Endorsed]: T.C.U.S. Filed Sept 19, 1944. [104]

PETITIONER'S EXHIBIT No. 3

In The Superior Court of The State of California,
In and for The County of Santa Clara

No. 18584

In the Matter of the Estate of

MILES STANDISH,

Deceased.

DECREE SETTLING FINAL ACCOUNT AND
REPORT ORDERING FINAL DISTRIBUTION

Comes now Allan M. Standish, Executor of the
Last Will and Testament of Miles Standish, de-

ceased, by R. C. Ogden, Esquire, his attorney, and presents to the court for settlement his Final Account, Report and Petition for Final Distribution, and the same having come on regularly for hearing after due and legal notice thereof, and it appearing from said account that there are charges in favor of said estate since the filing of the last account herein amounting to the sum of \$13,581.58, and that there are credits amounting to the total sum of \$2,932.82 leaving a balance of property in the hands of the Executor belonging to said estate in the total net value of \$10,684.76, and that said balance consists of the securities and property set forth in the account and hereinafter specified at the appraised or cost value thereof in the total sum of \$18,011.46, less cash advancements made by the Executor aggregating the sum of \$7,362.07; and said Executor now proves to the satisfaction of the court that said Account, Report and Petition for Partial Distribution was filed on the 11th day of July, 1942; That on the same day the Clerk of this court appointed the 24th day of July, 1942, as the day for the hearing thereof; that notice of the time and place of said hearing has been duly given in the manner and for the time required by law; and no person appearing to except to or to contest said Account, Report and Petition, the court, after hearing [105] the evidence, finds that said account is correct and is supported by proper vouchers, and being satisfied that all taxes upon the property of said estate including all inheritance taxes which, having become due and payable, have been fully

paid; that notice to creditors has been given as provided by law and that the time for the presentation of claims has expired and that all claims presented and allowed have been satisfied and discharged and that the estate is now in a condition for distribution; that the known assets now in the hands of the Executor and belonging to said estate are as follows:

- (1) 6 shares California Packing Corp. pref.
 - (2) 40 shares Penn. Railway
 - (3) 1 share Atlas Corp. common and 1 share Atlas Corp. pref.
 - (4) 23 shares North American Investors Corp. 6% pref.
 - (5) 30 shares North American Investors Corp. common.
 - (6) 50 shares U. S. and Foreign Securities Co.
 - (7) 703 $\frac{1}{4}$ shares Prudential Development Co.
 - (8) 70 shares Delaware Fund, Inc.
 - (9) \$1000.00 face value American Tel. & Tel. Co. 3% convertible bond.
 - (10) Upright piano and furniture.
 - (11) Claim against estate of Clara M. Lumhard, deceased.
 - (12) Heating plant installed in real estate.
 - (13) Real property in the City of Palo Alto.
- That the Executor has advanced during the

periods covered by his previous accounts to said estate the total sum of \$5,329.83 and has advanced subsequently and during the period covered by his present account the further sum of \$2,032.87, and is entitled to a lien on the assets above described for the total advances heretofore made by him to the said estate in the sum of \$7,362.70;

That the Executor has waived claim for all unpaid compensation due him as Executor of said estate and that the attorney for said estate was and is, as ordinary compensation for his services [106] based upon the total charges reported in the First Account Current hereinbefore filed which total charges were and are \$109,150.83, to the sum of \$1,921.50, and of said amount there has heretofore been paid the sum of \$1,600.00 and that there is now unpaid to said attorney the sum of \$321.50 being the balance due him for said ordinary services; and that upon the payment of said balance by the Executor to said attorney the said Executor shall be entitled to include said payment, together with any other amount necessarily disbursed by him in the closing of this estate in his lien against the above assets; that by the terms of the Last Will and Testament of the decedent which has heretofore been admitted to probate, a continuing bequest of \$100.00 per month was made payable to Martha A. Standish during her lifetime; that the said Martha A. Standish is at the present time of the age of seventy-two years or thereabouts; that under the provisions of said Will, sufficient of said estate shall be set apart to provide

for the payment of said \$100.00 per month to the said Martha A. Standish so long as she lives.

That the said Executor has consented to subordinate his lien upon the assets hereinabove described and specified to the payment of said \$100.00 per month therefrom to the said Martha A. Standish, and that said specified assets are sufficient in amount to provide for the payment of said monthly sum;

That all payments to date under the bequest to Martha A. Standish have been paid;

That pursuant to Order of Partial Distribution hereinabove made, the specific bequest made in said Last Will and Testament to Allan M. Standish, the son of said deceased, in the sum of \$50,000.00 has been paid and satisfied.

That by the provision of said Last Will and Testament of said decedent, all the rest, residue and remainder of the estate [107] now known or which may hereafter be discovered is devised and bequeathed as follows:

An undivided one-half interest therein to Allan M. Standish individually and for his own use and benefit, the other one-half undivided interest therein to Allan M. Standish in trust for the uses and purposes hereinafter more particularly set forth and specified, now therefore,

It Is Ordered, Adjudged and Decreed that the said account be in all respects as the same was rendered and presented for settlement, approved and allowed for settlement.

It Is Further Ordered, Adjudged and Decreed,

that the sum of \$321.50 be paid to the attorney, R. C. Ogden, out of the assets of said estate in payment of the balance due him for ordinary services rendered to the Executor.

It Is Further Ordered, Adjudged and Decreed that the said deceased died testate and left surviving him as his only heir at law his son, Allan M. Standish, now residing near Milpitas, California, and that the following property and no other constitutes the known assets of this estate, and should be set apart and distributed to Allan M. Standish, in trust, for the following uses and purposes:

To have, hold, manage, handle, control, bargain, sell, transfer, exchange without further order of this court, invest and reinvest the proceeds thereof, to collect the income therefrom and out of the income of the proceeds thereof or the proceeds of the sale of any of the said assets, to pay to Martha A. Standish the sum of \$100.00 per month so long as she may live and thereafter to reimburse himself for advances heretofore made by him to the said estate aggregating \$7,362.70, and also for any further advances he may make in paying the balance of attorney's fees and expenses incurred in closing this estate and thereafter and upon [108] the death of said Martha A. Standish, to transfer and set over any balance of said trust fund as provided hereinafter in this order distributing the residue of said estate and any balance of said fund then so remaining shall thereupon become a part of and the same is hereby distributed as a part of the residue of said estate.

It Is Further Ordered, Adjudged and Decreed, That all the rest, residue and remainder of the estate now known or which may hereafter be discovered, including any part remaining in the trust hereinabove last decreed upon the death of Martha A. Standish, is hereby distributed as follows, to wit:

A one-half undivided interest therein to Allan M. Standish, the son of said deceased, individually and for his own use and benefit, and the other one-half undivided interest therein to Allan M. Standish in trust for the following uses and purposes:

To have, hold, manage, handle, control, bargain, sell, transfer, exchange without further order of this court, and to invest and reinvest the proceeds thereof, collect the income therefrom, and to pay and set over to Patricia Standish and Beatrice Standish in equal shares such portion of the income therefrom and such portion of the proceeds of the sale of any property as in the judgment of the said trustee may be so distributed after deducting any amounts necessary to care for and pay the necessary expenses upon the remaining property of said trust, and in any event to set over, transfer and convey to the said Patricia Standish and Beatrice Standish in equal shares all of said one-half undivided interest in said residue which may then remain on the 22nd day of June, 1947.

It Is Further Ordered, Adjudged and Decreed that Patricia Standish and Beatrice Standish are each of them adult persons and each of them has heretofore attained the age of twenty-one years.

That the assets hereinabove distributed in trust to secure [109] the payment of \$100.00 per month to Martha A. Standish during her lifetime are the following assets and no other:

- (1) 6 shares California Packing Corp. pref.
- (2) 40 shares Penn. Railway.
- (3) 1 share Atlas Corp. common and 1 share Atlas Corp. pref.
- (4) 23 shares North American Investors Corp. 6% pref.
- (5) 30 shares North American Investors Corp. common.
- (6) 50 shares U. S. and Foreign Securities Co.
- (7) 703 $\frac{1}{4}$ shares Prudential Development Co.
- (8) 70 shares Delaware Fund, Inc.
- (9) \$1000.00 face value American Tel. & Tel. Co., 3% convertible bond.
- (10) Upright piano and furniture.
- (11) Claim against estate of Clara M. Lumbar, deceased.
- (12) Heating plant installed in real estate.
- (13) Real property in the City of Palo Alto, State of California more particularly described as follows, to wit:

Subdivisions Seven (7) Eight (8) and Nine (9) of Block 18 as designated and delineated upon certain map entitled "Map No. 1 of Seal Addition

to the Town of Palo Alto, which said map is of record in the office of the County Recorder of the County of Santa Clara, State of California, in Book F 3 of Maps, at page 63.

That the assets comprising the residue of said estate and which are hereinabove distributed as part of the residue of said estate includes any right, title or interest which the decedent had at the time of his death or which the estate now has in and to the lands located in the Counties of Mendocino and Humboldt in the State of California and more particularly described in that certain Deed of Trust dated the 17th day of June, 1932, in which Miles Standish the decedent herein, is the first party, and Miles Standish, Allan M. Standish, his son, and Beatrice M. Standish, wife of Allan M. Standish, are therein called the trustees, and which deed is of record in the office of the County Recorder of Mendocino County, in liber 74 of Official Records, page 221 etseq., and is also of record in the [110] office of the County Recorder of Humboldt County, in book 207 of Deeds page 295.

Dated: July 24th, 1942.

R. R. SYER

Judge of the Superior Court
Aforesaid.

The foregoing Instrument is a correct copy of the original on file in this office.

Attest Jan. 25, 1944.

FRANK W. HOGAN,
County Clerk and ex-officio Clerk of the Superior
Court of the State of California and for the
County of Santa Clara.

By ORTENZIA BRADY
Deputy.

[Endorsed]: Filed July 24, 1942. Frank W.
Hogan, Clerk. By T. R. Bonetti, Deputy.

[Endorsed]: T.C.U.S. Filed Sep. 19, 1944. [111]

PETITIONER'S EXHIBIT No. 4

San Francisco, California
October 5, 1933

Internal Revenue Agent in Charge
San Francisco, California

Valuation Report

Re: Estate of Miles Standish
Palo Alto, California

Date of Death: June 22, 1932

The above taxpayer owned timberlands and stock in timber holding companies located in Mendocino and Humboldt Counties, California.

The timber holdings of the different ownerships are rather scattered and in many cases quite inaccessible.

After an examination of the properties and a conference with the taxpayers representative on October 3, 1933 the following values were agreed upon as of June 22, 1932.

Valuations as of June 22nd, 1932

Land and Log Company

| | | | | | |
|-----------------------------|--------|-------|---|------|-------------|
| Timber Redwood | 16000 | M | @ | 0.60 | \$ 9,600.00 |
| Land—Timberland | 959 | Acres | @ | 0.50 | 479.50 |
| Grazing land | 112542 | Acres | @ | 1.00 | 1,125.42 |
| | | | | | <hr/> |
| Total..... | | | | | \$11,204.92 |
| Undivided 1/3 interest..... | | | | | \$ 3,734.97 |

Standish and Hickey & Connolly

| | | | | | |
|-----------------------------|-----|-------|---|------|-----------|
| Grazing Land | 320 | Acres | @ | 1.00 | \$ 320.00 |
| Undivided 1/3 interest..... | | | | | \$ 106.66 |

Prudential Development Co.

| | | | | | |
|-----------------------|--------|-------|---|------|-------------|
| Timber Redwood | 110000 | M | @ | 0.60 | \$66,000.00 |
| Land Timberland | 4582 | Acres | @ | 0.50 | 2,291.00 |
| | | | | | <hr/> |
| Total..... | | | | | \$68,291.00 |

There are 36,446 shares of stock outstanding in this company of which the taxpayer owns $5272\frac{7}{8}$ shares.

Value per share \$1,874

North Coast Development Co.

| | | | | | |
|-----------------------|--------|-------|---|------|--------------|
| Timber Redwood | 300000 | M | @ | 0.60 | 180,000.00 |
| Land Timberland | 16530 | Acres | @ | 0.50 | 8,265.00 |
| | | | | | <hr/> |
| Total..... | | | | | \$188,265.00 |

There are 2000 shares of stock outstanding in this company of which the taxpayer owns 100 shares.

Value per share \$94.13

South Eel Trust

Mendocino County

| | | | | | |
|-----------------------|-------|-------|---|------|-------------|
| Timber Redwood | 16000 | M | @ | 0.75 | \$12,000.00 |
| Redwood | 18000 | M | @ | 0.60 | 10,800.00 |
| Land Timberland | 1332 | Acres | @ | 0.50 | 666.00 |
| Total..... | | | | | \$23,466.00 |

Humboldt County

| | | | | | |
|-----------------------|-------|-------|---|------|-------------|
| Timber Redwood | 31000 | M | @ | 0.60 | \$18,600.00 |
| Land Timberland | 1120 | Acres | @ | 0.50 | 560.00 |
| Grazing Land | 4480 | Acres | @ | 1.00 | 4,480.00 |
| Total..... | | | | | \$23,640.00 |
| Grand Total..... | | | | | \$47,106.00 |

There are 960 shares outstanding of which the taxpayer owns 240 shares.

Value per share \$49.07

Standish and Hickey

Mendocino County

| | | | | | |
|-----------------------|-------|-------|---|------|-------------|
| Timber Redwood | 35000 | M | @ | 0.75 | \$26,250.00 |
| Redwood | 90000 | M | @ | 0.60 | 54,000.00 |
| Land Timberland | 7565 | Acres | @ | 0.50 | 3,782.50 |
| Grazing Land | 2627 | Acres | @ | 1.00 | 2,627.00 |
| Total..... | | | | | \$86,659.50 |

Humboldt County

| | | | | | |
|-----------------------------|-------|-------|---|------|--------------|
| Timber Redwood | 35000 | M | @ | 0.60 | \$21,000.00 |
| Land Timberland | 1280 | Acres | @ | 0.50 | 640.00 |
| Grazing Land | 1160 | Acres | @ | 1.00 | 1,160.00 |
| Total..... | | | | | \$22,800.00 |
| Grand Total..... | | | | | \$109,459.50 |
| Undivided 1/2 interest..... | | | | | \$ 54,729.75 |

Est. Miles Standish

Coos County Oregon Lands

Reference is made to report by Internal Revenue Agent Tom R. Wilson dated July 11, 1933, with reference to the Coos County Lands.

| | | | | |
|--------|--|-------|-------|-------------|
| Lands | Suitable for agriculture..... | 520 | Acres | |
| | Timberlands | 400 | Acres | |
| | Cut-over suitable for reforestation | 1000 | Acres | |
| | | | | <hr/> |
| | | 1,920 | | |
| | Total value of lands | | | \$16,000.00 |
| Timber | 9045 M ft. of Douglas Fir @ 0.50..... | | | 4,522.50 |
| | | | | <hr/> |
| | Total..... | | | \$20,522.50 |
| | Value of decedent's 1/2 interest..... | | | \$10,261.25 |

The value of this property is approved and accepted by the taxpayer.

Douglas County Oregon Lands

Reference is made to the report by Internal Revenue Agent Tom R. Wilson, dated May 19, 1933, in which the property is valued at \$13,280.50.

There was considerable confusion in the valuation of this property as it was thought that the Douglas County property was all that was claimed in the returned value of \$14,567.50 while the Coos County property should also have been included.

In view of the above the values of the Douglas County property are recommended as follows to bring them in line with the other values in this case.

| | | | | | |
|----------------------------|------|---|---|------------|------------|
| Fir, cedar and spruce..... | 8187 | M | @ | \$1.00 | \$8,187.00 |
| Hemlock | 2000 | M | @ | 0.25 | 500.00 |
| Land | 514 | A | @ | 1.00 | 514.00 |
| | | | | | <hr/> |
| | | | | Total..... | \$9,201.00 |

The 9201.00 represents the taxpayer's interest in this property.

In the conference with the taxpayer's representative on October 3, 1933, all of the above values were accepted as a basis of value for the decedent's estate.

Summary of Decedent's Timber Property

| Designation | Value |
|--|--------------|
| Land and Log Company 1/3 interest..... | \$ 3,734.97 |
| Standish and Hickey & Connolly 1/3 interest..... | 106.66 |
| Prudential Development Co. | |
| 5272 7/8 Shares @ \$1,874 | 9,881.37 |
| North Coast Development Co. | |
| 100 Shares @ \$4.13 | 9,413.00 |
| South Eel Trust | |
| 240 Shares @ 49.07 | 11,776.80 |
| Standish and Hickey 1/2 interest..... | 54,729.75 |
| Coos County Oregon Land..... | 10,261.25 |
| Douglas County Oregon Land..... | 9,201.00 |
| Total..... | \$109,104.80 |

Recommended By

E. T. F. WOHLBERG

Engineer Revenue Agent.

ACS

[Endorsed]: T.C.U.S. Filed Sept. 19, 1944.

PETITIONER'S EXHIBIT No. 5

Douglas County
Roseburg, Oregon

August 14, 1943

Mr. Louis Janin
1120 Mills Tower
San Francisco, Calif.Re: Standish & Hickey
Crocker Bldg.
San Francisco, Calif.

Dear Sir:

In reply to your letter of recent date in regard
to the property in Douglas County formerly owned

by the above named firm, the county took deed to all the various parcels of land mentioned on June 2, 1941.

Very respectfully
O. T. CARTER,
Sheriff, pro tem.

By H. C. DARBY,
H. C. Darby, Deputy

HCD:h [117]

August 11, 1943

Office of the Sheriff of Douglas County
Roseburg, Oregon

Re: Standish & Hickey, Crocker Bldg.
San Francisco, California

Dear Sirs:

On January 21, 1942 your office wrote a letter to Standish & Hickey advising that the County had taken a deed to their property in Douglas County. This property consisted of parcels in Sections 23, 26 and 27 of Township 20, Range 11 West W B & M, in Section 32 of Township 21, Range 11 West W B & M, in Section 25 of Township 21, Range 12 West W B & M and in Section 8 of Township 22, Range 11 West W B & M.

Can you advise me as to the date on which this deed was taken and also whether the properties listed above were all included in said deed or deeds. This information is desired in connection with an income tax proceeding which I am handling on

124 *A. M. and Beatrice M. Standish vs.*

behalf of Mr. Standish. A prompt reply will be greatly appreciated.

Very truly yours,
LOUIS JANIN

LJ:FG

[Endorsed]: T.C.U.S. Filed Sep. 19, 1944. [118]

PETITIONER'S EXHIBIT No. 6

Office of
Wm. F. Howell, Sheriff
Coos County
Coquille, Oregon

August 17, 1943

Louis Janin
Adolphus E. Graupner
1120 Mills Tower
San Francisco, California

Dear Sirs:

In answer to your letter of August 11, 1943, the property taken over by the County in June of 1941 is as follows:

| | |
|---|---------------|
| NW $\frac{1}{4}$ | Sec. 23-27-13 |
| NW $\frac{1}{4}$ NW $\frac{1}{4}$ | 28-26-11 |
| SW $\frac{1}{4}$ | 14-27-13 |
| S $\frac{1}{2}$ NE $\frac{1}{4}$ -NE $\frac{1}{4}$ SE $\frac{1}{4}$ | |
| S $\frac{1}{2}$ SE $\frac{1}{4}$ | 15-27-13 |
| Lot 5 | 22-25-11 |

S $\frac{1}{2}$ NW $\frac{1}{4}$ -N $\frac{1}{2}$ SW $\frac{1}{4}$ 28-31-11

SE $\frac{1}{4}$ 22-27-13

Enclosed are tax statements of that has not gone to the County.

Yours truly,

WM. F. HOWELL,
Sheriff

By MURIEL HERMAN,
Tax Department

WFH:mh

Enc. #3

[Endorsed]: T.C.U.S. Filed Sep. 19, 1944. [119]

In the United States Circuit Court of Appeals for
the Ninth Circuit

The Tax Court of U. S.

Docket #3950

In the Matter of:

BEATRICE M. STANDISH,

Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE

Respondent

The Tax Court of U. S.

Docket #3949

In the Matter of:

A. M. STANDISH

Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE

Respondent

ORDER FOR CONSOLIDATION OF THE
RECORD

Upon the consideration of the Motion filed herein
by Counsel for the Petitioners of review in the above
entitled proceedings, moving the Court to consoli-
date said proceedings for purposes of record, brief-

ing, hearing and decision and for other purposes;
It Is This 21st day of September, 1945:

Ordered That said Motion be and it is hereby granted. And it is further ordered that a certified copy of [121] the Motion and this Order be transmitted by the Clerk of this Court to the Clerk of The Tax Court of the United States.

CLIFTON MATHEWS

United States Circuit Judge

[Endorsed]: Order, ect. Filed Sept. 21, 1945.

A True Copy. Attest: September 21, 1945.

[Seal] PAUL P. O'BRIEN,
Clerk.

By /s/ FRANK H. SCHMID
Deputy Clerk.

[Endorsed]: T.C.U.S. Filed Sept. 26, 1945.

The Tax Court of the United States

Docket #3950

In the Matter of:

BEATRICE M. STANDISH,

Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

Docket #3949

In the Matter of:

A. M. STANDISH,

Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL

In compliance with the provisions of Paragraph (a) of Rule 75 of Federal Rules of Civil Procedure (Title 28, Sec. 723 (c) U.S.C.A.) as made applicable to review on decision of The Tax Court of the United States by Rule 30 of the Rules of the United States Circuit Court of Appeals for the Ninth Circuit, the above named petitioners hereby designate the portions of the record, proceedings and evidence to be contained in the consolidated record on review of

the above entitled proceedings prepared under one cover as follows:

1. Docket entries of the proceedings before The Tax Court of the United States. (In each proceeding) [123]

2. Petitions filed with The Tax Court for the redetermination of deficiencies, (one in each of the proceedings.)

3. Answers to said petitions.

4. Memorandum opinion of date March 19, 1945 by The Tax Court of the United States.

5. Decisions of The Tax Court of the United States entered on June 20, 1945 (one in each of said proceedings.)

6. Petitions for review of decision of The Tax Court by the United States Circuit Court of Appeals for the Ninth Circuit filed as of September 17, 1945, (one in each of said proceedings.)

7. Notices of filing of petitions for review and affidavits of service of said notices and copies of said petitions.

8. Orders, if any, which may be obtained enlarging time for preparation, transmission and delivery of the record.

9. Such portion of the transcript of evidence stenographically reported at the hearing as is set forth in Exhibit "A" to this designation of contents.

10. Exhibits admitted into evidence as set forth

in the said portion of the reporter's transcript, that is to say: Petitioners' exhibits 1 to 7 both inclusive.

11. Designation of contents of record on appeal, together with affidavit of service thereof.

12. Statement of points on which petitioner intends to rely; together with affidavit of service thereof. (One in each of said proceedings.)

13. Order of the United States Circuit Court of Appeals for the Ninth Circuit, for consolidation of the record.

R. CLARENCE OGDEN

Attorney for Petitioners.

State of California

City and County of San Francisco—ss:

Florence Easley, being duly sworn deposes and says:

That she is a citizen of the United States over the age of 21 years and not a party to the above entitled proceedings;

That on the 25th day of September, 1945 she deposited in the United States Post Office of San Francisco, California, addressed to J. P. Wenchel, Chief Counsel for the Commissioner of Internal Revenue, Internal Revenue Building, Washington, D. C. a true copy of the annexed Designation of Contents of Record on Appeal; that said copy of Designation, together with copy of this affidavit, together with copies of Statement of Points on which Appellants Intend to Rely, previously filed herein, were enclosed in an envelope addressed as

aforesaid and deposited in the Post Office of San Francisco, California, with postage prepaid thereon.

FLORENCE EASLEY

Subscribed and sworn to before me this 25th day of September, 1945.

[Seal] LULU P. LOVELAND

Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires August 27, 1947.

[Endorsed]: T.C.U.S. Filed Sept. 27, 1945. [126]

[Title of Tax Court and Causes—Nos. 3949-3950.]

CERTIFICATE

I, B. D. Gamble, clerk of The Tax Court of the United States do hereby certify that the foregoing pages, 1 to 126, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praeceptum in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 10th day of Oct. 1945.

[Seal] B. D. GAMBLE

Clerk, The Tax Court of the
United States.

[Endorsed]: No. 11159. United States Circuit Court of Appeals for the Ninth Circuit. A. M. Standish, Petitioner, vs. Commissioner of Internal Revenue, Respondent, and Beatrice M. Standish, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record Upon Petitions to Review Decisions of The Tax Court of the United States.

Filed October 15, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals for
the Ninth Circuit

No. 11159

In the Matter of:

BEATRICE M. STANDISH,

Petitioner

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

In the Matter of:

A. M. STANDISH,

Petitioner

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

STATEMENT OF POINTS ON WHICH PETI-
TIONERS INTEND TO RELY ON APPEAL
AND DESIGNATION OF PARTS OF REC-
ORD BELIEVED NECESSARY

Come now the petitioners and appellants herein-
above named and in compliance with Rule 19 of
the above entitled Court, respectfully state:

That they hereby adopt and repeat the "State-
ments of Points on Which Petitioner Intends to
Rely" heretofore filed by each of the petitioners in
the Tax Court of the United States, which "State-
ment of Points on Which Petitioner Intends to
Rely" and both of them are part of the records
transmitted by the Clerk of the Tax Court of the

United States to the Clerk of this Court; petitioners and each of them hereby makes a statement of the points on which each of the petitioners intends to rely on this appeal and for that purpose adopts the statement thereof as set forth in said "Statement of Points on Which Petitioner Intends to Rely" filed as aforesaid in the Tax Court of the United States.

Petitioners further designate the parts of the record and all thereof which have been transmitted by the Clerk of the Tax Court of the United States to the Clerk of this Court as parts of the record which she and he think necessary for the consideration of the points relied upon.

Respectfully submitted this 24th day of October, 1945.

R. CLARENCE OGDEN

Attorney for Petitioners and
Appellants

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed October 24, 1945. Paul P. O'Brien, Clerk.

